IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 540

JULIA ROSADO, LYDIA HERNANDEZ, MARJORIE MILEY, SOPHIA ABROM, RUBY GATHERS, LOUISE LOWMAN, EULA MAE KING, CATHRYN FOLK, ANNIE LOU PHILIPS, and MARJORIE DUFFY, individually, on behalf of their minor children, and on behalf of all other persons similarly situated,

Petitioners,

against

GEORGE K. WYMAN, individually and in his capacity as Commissioner of Social Services for the State of New York, and the DEPARTMENT OF SOCIAL SERVICES FOR THE STATE OF NEW YORK,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS

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BRIEF FOR RESPONDENTS

* This suit was originally entitled *National Welfare Rights Organization, et al.* v. *Wyman, et al.* That organization, lacking standing to sue, was stricken as a party plaintiff by order of the District Court dated April 23, 1969.

Opinions Below

1. Memorandum of U. S. District Court, E.D.N.Y. (WEINSTEIN, J.), April 23, 1969, denying respondents' motion to join the U. S. Department of Health, Education and Welfare as a necessary party defendant (34).*

2. Memorandum of said District Court, April 23, 1969, striking National Welfare Rights Organization as a party plaintiff (not in issue here) (31).

3. Memorandum of District Court, April 24, 1969, convening a three-judge Court and issuing a temporary restraining order (72).

4. Memorandum of three-judge Court, May 12, 1969 (MOORE, C. J., MISHLER, D. J. and WEINSTEIN, D. J.), dissolving itself (133).

5. Opinion of District Court in support of temporary injunction, May 15, 1969 (167).

6. Opinion of District Court granting summary judgment and permanent injunction to petitioners, June 18, 1969 (208).

7. Order of this Court, June 24, 1969, dismissing petitioners' appeal from dissolution of the three-judge Court and denying certiorari before judgment, 395 U. S. 826.

8. Opinion of U. S. Court of Appeals, Second Circuit, July 16, 1969, reversing the judgment of District Court and vacating preliminary and permanent injunctions and affirming the order dissolving the three-judge Court (215).

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* Unless otherwise indicated, numbers in parentheses refer to pages of the appendix in this Court.

9. Opinion of Mr. Justice Harlan, August 20, 1969, referring petitioners' application for stay to the full Court, not yet reported.

Jurisdiction

Petitioners invoke the jurisdiction of this Court pursuant to 28 U.S.C. §§ 1254(1), 2101(c) and (f).

Questions Presented

1. Did the District Court have jurisdiction over the validity of the New York statute establishing levels of monthly allowances to welfare recipients, based on its asserted non-conformity with 42 U.S.C. § 602(a)(23)?

a. Would alleged non-compliance with the Social Security Act, governing federal grants in aid to the states, warrant a declaration of invalidity of a state statute which establishes levels of welfare payments?

b. Where no plaintiff's anticipated reduction in welfare payments approached $10,000, does 28 U.S.C. § 1331 confer jurisdiction?

c. Where there is no claim of impairment of any constitutional or federal right, does 28 U.S.C. § 1343 confer jurisdiction?

d. If the complaint attacks a legislative act, not an individual action, does 42 U.S.C. § 1983 confer jurisdiction?

e. Where the constitutional claim has been mooted and the three-judge court which had jurisdiction over it dissolved, may a single District Judge employ the pendent jurisdiction doctrine to retain jurisdiction over the statutory claim?

f. Is a complaint that a State legislature has not appropriated a higher level of assistance barred by the State's sovereign immunity under the Eleventh Amendment?

g. Where Congress explicitly confers the responsibility for supervision of state programs on the Department of Health, Education and Welfare, which has not had an opportunity to complete its presently pending administrative review, is a cause of action based on the alleged non-conformity of the State statute to the Social Security Act ripe for judicial review?

2. Did New York's 1968 increase in its standard of need for welfare recipients so as to fully reflect increases in the cost of living constitute compliance with 42 U.S.C. § 602(a)(23)?

Statutes Involved

42 U.S.C. § 602(a)(23) in its entirety provides:

> "[The States shall] provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

New York Social Services Law § 131-a in pertinent part provides:

> "1. Any inconsistent provision of this chapter or other law notwithstanding, social services officials shall provide home relief, veteran assistance, old age assistance, assistance to the blind, aid to the disabled and aid to dependent children, to eligible needy persons who constitute or are members of a family household, in monthly or semi-monthly allowances or grants in accordance with standards established by the regulations of the department, but not in excess of the schedules included in this section, less any available income or resources which are not required to be disregarded

by other provisions of this chapter. Such schedules shall be deemed to make adequate provision for all items of need in accordance with the provisions of section one hundred thirty-one, exclusive of shelter and fuel for heating, for which two items additional provision shall be made by the social services districts in accordance with the regulations of the department.

2. The following schedule of maximum monthly grants and allowances shall be applicable to the social services district of the city of New York:

Number of Persons in Household

One	Two	Three	Four	Five	Six	Seven
$70	$116	$162	$208	$254	$297	$340

For each additional eligible needy person in the household there shall be an additional allowance of forty-three dollars monthly.

3. The following schedule of maximum monthly grants and allowances shall be applicable to all other social services districts:

Number of Persons in Household

One	Two	Three	Four	Five	Six	Seven
$60	$101	$142	$183	$224	$257	$290

For each additional eligible needy person in the household there shall be an additional allowance of thirty-three dollars monthly."

Statement of the Case

This action was instituted as a challenge to the validity of New York's legislative enactment establishing a schedule of monthly grants to AFDC recipients, enacted by the New York State Legislature on March 31, 1969 to take effect on July 1, 1969 (Social Services Law § 131-a). The

purpose of the suit and effect of the preliminary and permanent injunctions issued by Judge WEINSTEIN was to force the State to revert to its earlier administratively set levels and methods of payment which had been established pursuant to Social Services Law § 131. Two challenges to the statute were made—first, that the new statute allegedly did not comply with 42 U.S.C. § 602(a)(23), a section of the Social Security Act governing the eligibility of states for grants in aid under the AFDC program, and secondly, that the new statute in establishing higher levels of payments to recipients within New York City than those outside the city constituted a denial of equal protection.

For decades New York has mandated public welfare officials, "insofar as funds are available for that purpose, to provide adequately for those unable to maintain themselves" and to determine the adequacy of assistance provided "in accordance with standards of public health in the community with due regard for variations in cost from time to time and between localities" (Social Services Law § 131[1, 3]). Pursuant to this statutory standard, the New York State Department of Social Services has established items of basic need and levels of payment administratively and, from year to year, conducted cost-of-living surveys and adjusted such standards and levels in accordance therewith. See former 18 N. Y. Code of Rules & Regs. [NYCRR] § 352.4 (repealed eff. July 1, 1969). Thus in August, 1968, the Department, employing United States Bureau of Labor Statistics cost-of-living figures, as well as its own statistical material based on its actual pricing of items throughout the State, readjusted the schedule of grants (88-89, 102-105).

The resultant standard of need was calculated and the State divided into three areas, with standards varying by a few dollars per month on the basis of cost of utilities. Monthly cash allowances, exclusive of rent and fuel for heating (which are added separately to each recipient's payment), were calculated based on the number of per-

sons in the family and the age of the oldest child, computed in two-year intervals (89, 92; Document No. 26, Exhs. "B", "E").* Thus, in the area denominated "SA-1" (New York City, Dutchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester Counties), a family of four received an allowance ranging from $152.00 where the oldest child was five or under to $221.00 where the oldest child was sixteen or over (102). The mean age of children in families participating in the Aid to Families With Dependent Children program (herein "AFDC"), by far the major component of all welfare recipients in this State,** was calculated in a chart (92-95, 107; Doc. No. 26, Exh. "E") which indicated that, for example, in a family of four the mean age of oldest child was 10.09 years, so that the average monthly allowance (again exclusive of rent and fuel) received by a family of four receiving AFDC after the adoption of the August, 1968 cost of living adjustment was $191.00. Prior to this adjustment the figure was $173.00.

The 1969 Legislature in enacting § 131-a made three substantial changes in New York's public assistance program. It set levels of payment legislatively, rather than administratively; it averaged the age of the oldest child, thus eliminating age differentials in determining the level of aid to each size family, and it eliminated the special grant procedure. However, all of these important changes are based on the 1968 revised standard of need.

The elimination of age differentials and special grants greatly simplified New York's program of assistance. These

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* Document numbers refer to items in the original record before the Court of Appeals which have not been reproduced in the appendix, although the record has been transmitted to this Court.

** In New York State the AFDC program encompasses 886,860 of 1,210,601 welfare recipients [1968 figures].

In New York City 657,089 received AFDC allowances out of 889,262 total welfare recipients [1968 figures].

simplifications had been suggested by the Department of Health, Education and Welfare (herein "HEW") to all the states as early as February 5, 1964 (HEW State Letter No. 712, Document No. 49). It was also proposed by the State Department of Social Services in its 1968 report to the Governor concerning the revamping of the Welfare Law in order to stop the vicious cycle of poverty that has seemed to envelop its recipients ("Challenge and Response," Report by New York State Board of Social Welfare, pp. 2-5, Respondents' Exhibit below).

Special grants were payments for non-recurring expenditures over and above the general standard of assistance and only dispensed to a recipient who demonstrated a special need. The new law incorporates in statute for the first time in New York the flat grant concept, regarded as the most enlightened and progressive method of public assistance payment, eliminating the necessity of the welfare recipient applying for individual items—often a degrading and time-consuming process—and thereby enhancing his dignity, increasing his ability to budget and his self-respect, and freeing case workers from bookkeeping and petty decisions in order to allow them to devote their time to counseling of recipients.

The legislative history of the statute here under attack demonstrates the thorough, comprehensive study given the flat-grant concept by the Legislature. Extensive hearings were held and documentary evidence and testimony adduced by Social Services administrative officials, caseworkers, and other experts (Documents 49, 50). The flat-grant approach was approved by virtually all as "uniformly consistent" and "more realistic" (Document 60). The witness of the N. Y. State Communities Aid Association strongly advocated flat grants as an approach which "[a]t one stroke * * * would simplify and speed up the administrative process, and would let the social worker devote attention to counseling and other remedial services.

From the welfare families' point of view, flat grants would expedite assistance, and would give the recipient control of the full amount of cash to which he is entitled—rather than have the caseworker dole out a dime here for bobbie pins, or a dollar there for a floor mop." In addition, flat grants would, it was felt, "help strengthen a sense of personal responsibility".

The Nassau County Social Services Commissioner summarized the advantages of flat grants as fostering "equality and the avoidance of preferential treatment" (Document No. 50, p. 6). New York City's Department expressed an even stronger judgment as to the superiority of the flat-grant approach (Document No. 26, Exh. D).

The Joint Legislative Committee dealing with revision of the Social Services Law, after digesting this plethora of testimony and documentary material, conferred with the Department of Social Services and the levels set forth in the schedules contained in § 131-a were established. The mean age of the oldest child in each size family was computed. The amount provided in 1968 for a family of each size in cases where its oldest child was of that mean age was then adopted as the standard allowance for that size family. Where the mean age contained a fraction, the older age was used. Thus, for a family of four, which received amounts ranging from $152.00 to $221.00 (depending upon the age of its oldest child), the mean age of such oldest child was found to be 10.09 and, therefore, $191.00, the figure where the oldest child was ten or eleven, was used as a base amount. To this was added $17.00—the amount necessary to bring the allowance up to $3,535.00, the annual subsistence level determined by the United States Government for New York City for a family of four (92-93, 107), or a monthly allowance of $208.00. The allowance for the remainder of the state was determined at a differential of $25.00 for a family of four (93). An amendment to § 131-a permits the other welfare districts

to be increased to the New York City level if the cost-of-living figures so dictate.* As the computations of the Department show, these levels, based on the previous allowance including the cost-of-living increases of 1968, result in slightly increased benefits to families with younger children and slightly decreased benefits to those with older children (94-95). These adjustments exclude rent and fuel, which are paid separately, as well as the additional items now paid on a purchase-of-services basis by the Department (95-96).

The New York standard of need includes, as we have shown, rent, which is a major component although not encompassed in the § 131-a schedule, since it varies with the amounts actually paid by each family. Average monthly rent for an AFDC family of four in New York is $83.90 (95). It is undisputed that rents have increased during the period 1968-1969 (95). These substantial increases in rent—13% in New York City in the past three years—represent a substantial increase in the standard of need and in the actual level of payment to welfare recipients in New York over and above the levels set in § 131-a.

Finally, the Legislature was well within the broad ambit of its discretion in establishing welfare payments pursuant to a flat-grant system when it recognized the wide

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* "4. Provided it accords with federal requirements, the regulations of the department shall provide that the commissioner, with respect to any social services district to which subdivision three applies, may promulgate a schedule of monthly grants and allowances for greater or lesser amounts than established by the regulations of the department applicable to such district, but not to exceed the maximums prescribed by subdivision two, for all items of need exclusive of shelter and fuel for heating, if it is established that in such district the total cost of the items included in the schedule applicable to such district actually is more or less, as the case may be, than the cost thereof reflected in such schedule. A social services official may, with the approval of the appropriate local legislative body, make application to the department for the promulgation of a schedule pursuant to this subdivision." (Added to § 131-a by L. 1969, ch. 411, enacted May 2, 1969.)

disparity in the real levels of welfare payments throughout the state (94). The special grant system militated heavily in favor of the more aggressive or sophisticated welfare recipient. The size and frequency of special grants varied enormously according to locality and according to the vagaries of individual caseworkers and welfare administrators as well as the assiduousness with which such special grants were requested by recipients. This approach was, as we have shown, universally rejected as outmoded and unfair by every serious commentator in the field, and specifically condemned by the Department of HEW (Document 49). The Legislature had a right to consider these criticisms of the existing system of administratively established levels of special grants and to substitute therefor a flat-grant approach which would eliminate disparities in actual benefits received due to factors unrelated to need.

New York, like every state, receives federal funds through the AFDC and other programs administered by HEW under the Social Security Act (42 U.S.C. §§601, *et seq.*).* This program, established in 1935, provides certain minimal requirements which the States must meet in order to be eligible for participation therein. Although § 601 requires the Secretary of HEW to approve state plans, including the standard of need (the components of a subsistence budget designated by each State), there is no federal regulation which governs the amount a State actually pays to its recipients. This is dramatically demonstrated by the chart showing the enormous disparity in sums actually paid by the various states under their AFDC programs—ranging from $71.75 per average recipient in New York, through $58.25 in New Jersey (the next highest State) to $8.50 in

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* Social Security Act sections will be referred to herein as § 601, § 602, etc., their numbers in 42 U.S.C. Section 601 is also known as § 401 of the Social Security Act of 1935; § 602 is § 402, etc.

Mississippi (117). The legislative history of the Social Security Act (S. Rep. 628, 74th Cong., 1st Sess. 4 [1935]) candidly notes that "[l]ess Federal control is provided than in any recent Federal aid law." As this Court noted in *King* v. *Smith*, 392 U. S. 309, 318-319 (1968), "each State is free to set its own standard of need and to determine the levels of benefits by the amount of funds it devotes to the program."

In 1968 Congress added to § 602(a) the provision on which this suit was based. That sub-section, set forth at p. 10, *supra*, embodied in federal law the cost-of-living adjustment to its standard of need which New York has made periodically through the years by conducting re-pricing surveys annually, employing Bureau of Labor Statistics material, and re-adjusting its allowance schedules whenever prices have increased 2% or more (88-89). Indeed, § 602(a)(23) was severely limited in scope from the bill originally introduced by HEW in Congress and, as enacted, only requires the states to readjust their standards of need and maximums paid once during the period ending July 1, 1969.

The bill originally introduced by HEW (H.R. 5710, § 202, 90th Cong., 1st Sess.) which emerged as § 602(a)(23) contained requirements that all states, by July 1, 1969, pay a benefit equivalent to their full standard of need, which many states now fall short of doing. In fact 28 states pay less than their own professed standard of need (106).* See table appended to this brief. The bill also required each state to review its standards annually.

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* In Alabama the standard of need for an AFDC family of four, including rent, is $177.00 but the actual amount paid is only $89.00. And in Missouri, the standard of need of $305.00 exceeds New York's, but the actual amount paid is only $124.00, while New York pays its full standard of need—$278.00. Mississippi pays $55.00 (106).

As enacted, however, the statute (H.R. 12080, § 213, 90th Cong., 1st Sess.) excluded these provisions, which would have fundamentally altered the structure of public assistance in this country and done much to reduce the vast gap in payments from state to state. It did no more than require that states adjust their standard of need, as well as any dollar maximum imposed on the amount paid to families (New York had no such maximum), by July 1, 1969. This New York plainly did in its 1968 cost of living adjustment.

The 1969 New York Legislature, in adopting the section here challenged, for the first time embodied the monthly allowance schedule in the statute. It employed, however, the 1968 computation of allowance based on the cost of living adjustment which fulfilled the requirements of § 602(a)(23). For the first time it enacted for the State as a whole the flat grant approach to public assistance payments, under which a monthly sum is computed and used as a base allowance, encompassing all expenses of the welfare recipient except rent and fuel for heating, which continue to be paid separately. Special grants for expenses such as moving, special diets, etc., which were administratively authorized under the earlier law, were eliminated and the monthly allowance, increased somewhat, was deemed to include all extras. The Department of Social Services, in addition, is free to provide directly for moving expenses, apartment security deposits, etc., over and above the grants on a direct purchase of services basis (95, 285-286).* See 18 NYCRR § 352.5.

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*The New York City Department of Social Services in 1968 established a pilot demonstration project in which it used flat grants on a cyclical basis, replacing special grants for many items of clothing and household materials. In requesting approval of this project from the Department of Social Services, the City Department specifically sought permission to "[r]elieve front-line agency personnel from the cumbersome, demeaning, conflict-ridden, idiosyncratic, and administratively costly process of client-by-client and item-by-item decision making" (Document No. 26, Exh. D).

Proceedings Below

This action sought judgment declaring § 131-a invalid and enjoining its enforcement, thus forcing the State to revert to the earlier administratively set levels of payment established pursuant to § 131. Originally two challenges to the statute were raised—the State's alleged non-compliance with § 602(a)(23) and, in addition, a claimed denial of equal protection of the laws to those plaintiffs who resided in Nassau County on the ground that the statute established higher levels of payments to recipients within New York City. The equal protection claim was mooted by an amendment to § 131-a(4) permitting the Commissioner of Social Services to raise the level of payments in any county to that paid to New York City recipients, and authorizing the Board of Supervisors of any county to request such an increase (fn. p. 10, *supra*).*

The District Court issued a temporary restraining order on April 24, 1969 and, granted the motion of respondents (over petitioners' opposition [260-265]) that a three-judge Court be convened pursuant to 28 U.S.C. § 2281 since the latter of petitioners' attacks on § 131-a invoked the equal protection clause (72-77). The District Judge denied respondents' motion to join the Secretary of HEW as a party defendant pursuant to Federal Rules of Civil Procedure 19(a).

Both sides moved for summary judgment before the three-judge Court (MOORE, C.J., MISHLER, D.J. and WEINSTEIN, D.J.).

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* The alleged denial of equal protection stemming from the disparity in payment levels as between New York City and the remainder of the state is the subject of a subsequent action, *Rothstein* v. *Wyman* (S.D.N.Y., 69 Civ. 2763), in which a preliminary injunction was issued by a three-judge Court on September 12, 1969 enjoining the State from maintaining different payment levels. That injunction has been appealed to this Court. See amplification of *Rothstein's* effect at pp. 33-34, *infra*.

By order dated May 12, 1969 that Court dissolved itself on the ground that the constitutional issue had become mooted by the amendment to § 131-a (133-136). Judge WEINSTEIN thereafter issued his preliminary injunction against enforcement of the statute (137-139), despite the fact that it was not to take effect until July 1, 1969 and despite the uncontroverted estimate that suspension of § 131-a would require the State to pay out $10,000,000 each month more than the amount payable pursuant to § 131-a—an amount completely irretrievable once disbursed (65-66).

That decision, although ostensibly granting a preliminary injunction, in fact ruled against the validity of the state statute in every important respect and effectively ruled it to be invalid, stopping just short of an express order to that effect. It held that the federal cost-of-living amendment "precludes" New York from enacting the statute its Legislature determined to constitute an enlightened, comprehensive approach to the complex problems involved in setting adequate levels of welfare grants in a period of rapidly increasing numbers of recipients—especially in the AFDC program here at issue. As we shall show, the narrow, technical provision cited by the District Judge utterly fails to support the unprecedented use to which it was put as a lever to invalidate the New York statute.

The District Judge found "a number of independent bases for concluding that jurisdiction exists" (168) and held it "clear that at the time the three-judge court was convened jurisdiction existed pursuant to [28 U.S.C. § 1343(3) and 42 U.S.C. §§ 1983, 1988]" (169). But those statutes do not support that conclusion. See Point I, *infra*. Even when the constitutional issue was mooted and the three-judge court which had jurisdiction over it was dissolved, the District Judge nonetheless claimed pendent jurisdiction over the statutory claim (169-172).

Judge WEINSTEIN recognized the possibility of a conflict with this Court's rule in *United Mine Workers* v. *Gibbs*,

383 U. S. 715, 726 (1966):

> "Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well."

See also, *Wham-O Mfg. Co.* v. *Paradise Mfg. Co.*, 327 F. 2d 748, 753 (9th Cir. 1964). The District Judge conceded this rule but decided it was no more than a voluntary abstention which would be "wasteful of judicial energy and dangerous to the litigants" if practiced here (171).

The District Judge also concluded that he had jurisdiction under 28 U.S.C. § 1331, even though that section requires that "the matter in controversy exceeds the sum or value of $10,000." He acknowledged that the claims of individual plaintiffs may not be aggregated to satisfy that statute, *Snyder* v. *Harris*, 394 U. S. 332 (1969), reh. den. *id.* 1025, and that none of the anticipated reductions of any of the plaintiffs approached $10,000 (173). But he used § 1331 as a basis for jurisdiction through the novel suggestion that "indirect damage" to them could occur if reductions in their welfare grants caused malnutrition so severe as to retard "their children's physical and mental development" (174-176). This theory, conveniently created for this occasion, is utterly speculative and rests on a pillar of inferences far too shaky to provide a solid jurisdictional base. It is particularly ironic when one considers that the level of AFDC payments in New York is the highest in the entire nation.

The District Judge misread § 602(a)(23) and totally disregarded its legislative history and its administrative construction by HEW (see HEW's brief submitted in *Lampton* v. *Bonin*, appended to petitioners' brief [A-14-A-31]), concluding it deserved a "broader construction" and that it required every state to increase its level of welfare payments (194-199). In fact that section, as it emerged from Congress, requires only that the standard of need of each state, and "any maximums that the State imposes on the

amount of aid paid to families," be increased. See Point II, *infra*. The legislative history cited by the District Court (195-199) dealt with the bill as introduced by HEW, which would have mandated annual increases in line with cost-of-living increases, and would have required each state to pay its full standard of need. But the amendment which actually passed was emasculated and contained no such broad changes. Moreover, as we shall show, the District Judge's insistence that § 602(a)(23) wrought far-reaching reforms (despite its debilitation by Congress) runs counter to HEW's own interpretation of the very statute.

The Court of Appeals stayed the preliminary injunction on June 11, 1969. In the meantime the District Judge granted summary judgment and a permanent injunction to petitioners on June 18, 1969 (208). The Court of Appeals likewise stayed that injunction on the following day. At this juncture petitioners sought immediate review in this Court and vacatur of the Court of Appeals' stays, both of which were denied by this Court on June 24, 1969 (395 U. S. 826).

On July 16, 1969 the Court of Appeals reversed Judge WEINSTEIN's injunctions and dismissed the complaint (215). The opinion by HAYS, J. upheld the dissolution of the three-judge Court since any determination by it "would have been premature and its decision would have been rendered moot by the provision of the new schedules for Nassau County" (220), adding "[t]he court was right in refusing to act on facts that were fluid and subject to early change" (220-221). It went on to hold that the District Judge lacked jurisdiction either under the pendent jurisdiction doctrine invoked by him or under any other theory. Pendent jurisdiction was unavailable, as the Court of Appeals held (221-222):

> "The assertion of a constitutional claim required the convening of a three-judge district court. 28 U.S.C. § 2281 (1964). That court is the only court which ever had jurisdiction over the constitutional claim. Since

> the single judge at no time had jurisdiction over the constitutional claim there was never a claim before him to which the statutory claim could have been pendent. If the three-judge court had attempted to give the single judge power to adjudicate the statutory claim, it could not have done so, since with the dissolution of the three-judge court the statutory claim was no longer pendent to any claim at all, much less to any claim over which the single judge could exercise adjudicatory power."

Aptly describing petitioners' construction of the pendent jurisdiction doctrine as "overbroad," the Court held that even if it were accepted, "we would hold in the present case that the district judge's exercise of such jurisdiction was an abuse of discretion" (222):

> "We believe that it is inappropriate here, where, whatever the technical consequences of enjoining enforcement of Section 131-a may be, the practical effect of an injunction is to order the New York legislature to appropriate more funds for welfare.
>
> A federal court should not assert such power over a state legislature unless there is no possible alternative. Even if the district judge had had discretion, he should have refused to rule on the statutory claim."

The Court went on to hold that HEW "is now engaged in a study of the relationship between Section 602(a)(23) and Section 131-a. HEW, with its acknowledged expertise in the field of social security, is far better equipped than the Federal Courts to receive an alleged inconsistency between a complex state statutory scheme for payments in behalf of dependent children and an ambiguous amendment to the Social Security Act." It concluded that "[t]he District Court, even if it had power to act on the pendent claim, should have declined to do so, at least until HEW had completed its consideration of the matter" (223).

The Court rejected the District Court's invocation of 28 U.S.C. § 1331 as a basis for jurisdiction since the "indirect damage" alleged by petitioners was "too speculative to create jurisdiction" under that section (224-225), citing *Boyd* v. *Clark*, 287 F. Supp. 561, 564 (S.D.N.Y. 1968), aff'd on another issue 393 U. S. 316. And it likewise held that neither 28 U.S.C. § 1343 nor 42 U.S.C. § 1983 provide any footing to petitioners since the requisite assertion of deprivation of a federally-protected right was lacking (226):

> "The burden of the complaint is that New York's statute, Section 131-a, is not in conformity with the requirements of Section 602(a)(23) of the federal statutes and that therefore New York is not entitled to receive federal grants under the AFDC program. Plaintiffs have no rights under federal law to any particular level of AFDC payments or, indeed, to any payments at all. See *New York* v. *Galamison*, 342 F. 2d 255 (2d Cir.), cert. denied, 380 U. S. 977 (1965); *Bradford Audio Corp.* v. *Pious*, 392 F. 2d 67 (2d Cir. 1968).
>
> Moreover, it is clear that the defendant Department of Social Services for the State of New York is not a 'person' within the meaning of Section 1983. [Citing cases]."

Addressing the merits, the Court noted that "our decision does not rest solely on jurisdictional grounds" (227), and observed that § 602(a)(23), as introduced, "would have required each state to pay its full standard of need and to adjust that standard annually in accordance with changes in the cost of living," but that in the statute as finally adopted, both these provisions were eliminated (227). It rejected the view advanced by petitioners "that § 602(a)(23) sets a floor under state AFDC benefits, freeing them at their previous level plus the cost of living adjustment," and held it made "two far less dramatic

changes"—(1) requiring each state to adjust its standard of need by July 1, 1969 to reflect changes in the cost of living, "but not [to] require any state to pay its standard of need, nor to increase its AFDC payments or to refrain from decreasing them," and (2) adjusting family maximums to reflect cost-of-living increases (New York has no such maximum) (228-229). The Court of Appeals noted that "[t]he Congressional action was entirely consistent with the traditional federal policy of granting the states complete freedom in setting the levels of benefits" (229), and added (230):

> "It is inconceivable that if this were the far reaching measure serving to reverse a basic national policy which plaintiffs claim it was, it should be adopted without comment from committees and individual members of Congress."

In this connection the Court found it noteworthy (230) that neither the summary of social security amendments for 1967 prepared by the Senate Committee on Finance and House Committee on Ways and Means, nor the report for that year of the Senate Finance Committee, even mentioned the provisions of § 602(a)(23).

Chief Judge LUMBARD concurred with Judge HAYS' opinion, noting that he "agree[d] with much of" it, but suggesting that although the District Judge had pendent jurisdiction, he abused his discretion in rendering judgment on the § 602(a)(23) claim after the constitutional issue had become moot (231-232). In this regard, Judge LUMBARD stated that "the extreme nature of the injunctive remedy against the State weighs heavily against the adjudication of a pendent claim by a single District Judge" (233)—particularly where, as here, "the constitutional claim had been dismissed well before a substantial investment of federal judicial resources in the case as a whole at the time of the reference of the pendent claim to the single judge" (233).

Moreover, Chief Judge LUMBARD agreed with the majority that "the federal claim seems more apt for initial resolution by the Department of Health, Education and Welfare, than by the Courts" (233). He went on to substantially agree with the holding that, aside from the remedy before HEW, the federal courts lacked jurisdiction over the claim under § 602(a)(23) (234), concluding (235):

> "Since I do not feel that the federal courts are the appropriate forum for the initial resolution of plaintiff's statutory claim, I do not reach the merits of that claim. At the same time, I should add that Judge Feinberg's view of the merits does not persuade me."

Dissenting, Judge FEINBERG followed the views espoused by the District Judge, but contended that the 3-judge Court should not have been dissolved (257-258).*

Summary of Argument

The federal courts lack jurisdiction over a claim that a state's asserted non-compliance with the Social Security Act renders void that state's statute establishing monthly welfare allowances. None of the purported bases for federal jurisdiction urged by petitioners are tenable. In the absence of any constitutional issue (the equal protection claim having been properly found moot and the 3-judge court having properly dissolved itself), it is beyond the reasonable scope of the judiciary to declare void a state statute providing levels of welfare payment on the ground of its failure to comply with what are at most conditions of eligibility to receive federal grants.

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* The dissent concluded (258): "If I thought that the dissolution of the three-judge court completely divested Judge Weinstein of all jurisdiction then I would regard the decision to dissolve as an abuse of discretion and would dissent on that ground too. However, * * * I do not attach that consequence to dissolution and, accordingly, need not go that far."

Moreover, such a claim amounts to a suit against the state, barred by separation of powers in that it seeks to compel the legislative appropriation of state monies—relief far in excess of that involved in *King* v. *Smith*.

In addition, the pendency of an administrative proceeding before HEW to determine the precise issue sought to be litigated here—the conformity of the New York Statute to § 602(a)(23)—renders this action unripe for judicial determination. This is no technical objection but goes to the core of petitioners' attempt to short-circuit HEW and embroil the judiciary in the minutiae of conformity of state plans to the Social Security Act provisions before the Department has had an opportunity to initially pass on these very issues, which it must do in any event.

If the federal judiciary had jurisdiction here, the complaint was in any event correctly dismissed since New York fully complied with § 602(a)(23). That amendment required each state to adjust its standard of need, and family maximum if any, during the period January 2, 1968-July 1, 1969 to reflect cost-of-living increases. This New York did by its 1968 adjustment of allowance levels. The adoption of § 131-a in 1969 represented an averaging of the levels, as increased by the 1968 adjustments, so as to pay flat grants to all families of given size. These changes ended earlier distinctions based on the age of the oldest child and also, in keeping with the overwhelming preponderance of enlightened opinion in the field, abolished special grants to welfare recipients, substituting a flat grant. No violation of § 602(a)(23) can be culled from the decision of New York to change from an obsolete, cumbersome system of special grants to a simpler flat-grant method at the same levels, eliminating bookkeeping by state and local personnel and determinations of eligibility for special grants, and freeing caseworkers for counseling services. Neither the wording of § 602(a)(23) nor its legislative history support its use, attempted by

petitioners, as a lever to invalidate New York's statute establishing welfare payment allowances—already the highest in the nation.

POINT I

The District Court lacked jurisdiction over the claim asserted by petitioners. None of the jurisdictional bases asserted by them provides any warrant for disposition of their claim in the federal courts.

The Court of Appeals correctly found that no jurisdiction existed in the federal courts over the claim asserted by petitioners. The jurisdictional defects transcend the utter failure by petitioners to satisfy any of the statutes invoked by them, and highlight the extraordinary nature of the claim—one which lies beyond the powers of the judiciary, however broadly described.

A. Assertions of non-conformity with § 602(a)(23) do not confer jurisdiction to invalidate a State statute.

In essence this is an action, in the guise of a suit against the named defendants Commissioner and Department of Social Services, to compel the New York Legislature (not named as a party defendant) to appropriate more money for welfare. The deprivation of no constitutionally-protected right was alleged, except for the peripheral equal protection claim, properly ruled moot by the 3-judge Court. See pp. 33-34, *infra*. (That claim is now being litigated in *Rothstein* v. *Wyman*, following subsequent administrative action by respondents which, in the opinion of the 3-judge Court in that case, ended the unripeness found by the 3-judge Court here to be a bar to determination of that claim. The merits of the equal protection contention are not involved here.)

Petitioners' remaining assertion, and the only one ever seriously pressed in this case, is the claimed non-conformity of the State statute with § 602(a)(23), a narrow techni-

cal amendment to the Social Security Act provisions establishing criteria for federal participation in state AFDC programs. Nothing in the Act contemplates employment of its provisions as a vehicle for invalidating a state statute on the ground of its non-conformity. See *Norton* v. *Blaylock*, 285 F. Supp. 659 (W. D. Ark. 1968), where a discharged State welfare department employee asserted that her dismissal without cause was in violation of 42 U.S.C. §§ 304, 605, 715, 1204 and 1384, each of which provides, in the case of each federal grant program (AFDC, aid to the blind, old-age assistance, etc.), "that if a participating State does not set up and abide by a suitable employee merit system, federal funds may be withheld." The Court held that despite this "strongly [expressed] congressional policy in favor of job security for State welfare employees," relief was limited to a withholding of federal funds, and that an order overturning the plaintiff's discharge was beyond the scope of its authority. 285 F. Supp. at 663.

Petitioners rely heavily on *King* v. *Smith* as precedent for their attempt to overturn § 131-a for non-conformity. But, as the Court of Appeals held, that case involved totally different considerations. There the main thrust of the challenge to the Alabama regulation was its denial of equal protection, and the 3-judge Court's decision invalidated the regulation primarily on that ground, as well as on its inconsistency with the Social Security Act. 277 F. Supp. 31. Jurisdiction plainly existed because the statutory claim rested on the same facts as this substantial constitutional claim. This Court's affirmance was based on the statutory argument alone, but the Court's opinion explicitly stated (392 U. S. 309, 312, n. 3):

> "We intimate no views as to whether and under what circumstances suits challenging state AFDC provisions only on the ground that they are inconsistent with the federal statute may be brought in federal courts."

Although the District Court's judgment invalidating the Alabama regulation was affirmed on the basis of its inconsistency with the Act, the Constitutional issue remained in the case and was argued at length in this Court. Indeed, the question of jurisdiction over the statutory issue does not appear to have been argued by the State. This Court's decision was that (392 U. S. at 333) Alabama had a choice of invalidating its regulation or of losing federal funds:

> "The regulation is therefore invalid because it defines 'parent' in a manner that is inconsistent with § 406 (a) of the Social Security Act. 42 U.S.C. § 606(a)." [n. 34: There is of course no question that the Federal Government, unless barred by some controlling constitutional prohibition, may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and that any state law or regulation inconsistent with such federal terms and conditions is to that extent invalid. See *Ivanhoe Irrigation District* v. *McCracken*, 357 U. S. 275, 295 (1958); *Oklahoma* v. *Civil Service Comm'n.*, 330 U. S. 127, 143 (1947). It is equally clear that to the extent HEW has approved and so-called 'man-in-the house' provision which conflicts with § 406(a) of the Social Security Act, 42 U.S.C. § 606(a), such approval is inconsistent with the controlling federal statute.]"

That disposition is inapplicable to the present case. No one pretends that jurisdiction here is appropriate to protect federal funds from unfair disbursement. On the contrary, petitioners seek to obligate the federal treasury at a rate of approximately $5,000,000 per month.

Further, involved here is not a regulation containing a definition limiting a group of persons eligible for welfare, but the State's basic statute establishing actual levels of welfare allowances—and *King* v. *Smith* is itself authority for the undeniable fact that the states are free to establish standards of need and levels of payment. See 392 U. S. at

318-319 ("each State is free to set its own standards of need and to determine the level of benefits by the amount of funds it devotes to the program"); *id.* n. 15 ("[t]he level of benefits is within the State's discretion"). It is significant that this Court wrote this language some months after the enactment of § 602(a)(23). Moreover, the continued HEW acquiescence in Alabama's regulation has no analogy here, where the State statute was not yet even in effect when this suit was brought, and where proceedings to determine conformity were pending before HEW. See Point I, *infra*, as to the prematurity of this case and the pendency of jurisdiction in HEW.

That *King* v *Smith* does not provide a basis for jurisdiction here is highlighted by Justice DOUGLAS' concurrence, which demonstrated that the holding that the regulation was inconsistent with the federal statute "does not completely resolve the question presented" since "Alabama is free to revive enforcement of its substitute parent regulations at any time it chooses to reject federal funds made available under the Social Security Act." 392 U. S. at 335, n. 3.

The fact is that any inconsistency between a State statute establishing levels of welfare payment and a Social Security Act provision can do no more than render that state ineligible to receive federal grants *pro tanto*. The federal government has not preempted the field of welfare. It has, on the contrary, left that responsibility almost entirely to the states. So long as the states transgress no constitutional mandate, inconsistency between the state law and the Social Security Act may result only in a forfeiture by the state of federal grants, and create no independent cause of action to invalidate the state statute. This is borne out by *Oklahoma* v. *Civil Service Commission*, 330 U. S. 127, 143 (1947), itself cited in *King* v. *Smith* (392 U. S. at 333, n. 34). The State there challenged the withdrawal of federal highway construction funds following determination by the United States Civil Service Commission that a State highway official had engaged in political activity in vio-

lation of the Hatch Act. This Court held the withdrawal of federal money was an appropriate use of the federal government's "power to fix the terms upon which its money allotments to states shall be disbursed." *Id.* at 143. Oklahoma could refuse to dismiss the official and forfeit federal grants. But the courts lacked jurisdiction to compel the State to discharge the official. This Court aptly described the scheme as "[t]he offer of benefits to a state by the United States dependent upon cooperation by the state with federal plans." *Id.* at 144. No more is involved here.

An action to void a state statute on the ground of its asserted inconsistency with the prerequisites for federal grants is a contradiction in terms. Examination of the applicable provisions of the Act underscores this fact. 42 U.S.C. § 601 authorizes Congress to appropriate "for each fiscal year a sum sufficient to carry out the purposes" of "encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, *as far as practicable under the conditions in each State,* * * *." (Emphasis supplied.) These sums "shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children." The following section (§ 602) enumerates the provisions which State plans must contain in order to be eligible for federal funding. Section 604 permits the Secretary of HEW, after notice and hearing, to find that a State has failed "to comply substantially with any provision required by section 602(a) * * * to be included in the plan," and to "notify such State agency that further payments will not be made to the State until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply." This provision is presently the subject of an action (*National Welfare Rights Organization* v. *Finch,* D.C.D.C., Civ. 2954-69) to compel HEW to enforce § 602(a)(23) as against various states.

This configuration is one of federal grants-in-aid and statutory eligibility requirements which bind each State to comply on pain of termination of federal funding. But there is no authority anywhere in this scheme for judicial invalidation of a State welfare allowance statute based on its alleged non-compliance with a prerequisite to grants-in-aid. In the context of this statutory scheme, to invoke § 602(a)(23) as a weapon against a state statute is an anomaly.

That the striking down of a state statute establishing levels of welfare payment on the ground here asserted is beyond the judicial function, as the Court of Appeals recognized, is borne out by the absence of any statutory authority for jurisdiction in the District Court. Although petitioners invoked several statutes in their effort to find jurisdictional footing, and the District Judge amazingly accepted their view of each of these statutes (28 U.S.C. §§ 1331, 1343, and 42 U.S.C. § 1983), the Court of Appeals correctly separated these strands and held none sufficient to confer jurisdiction. In fact the statutes invoked by petitioners simply do not admit of the sort of stretching in which the District Court indulged.

B. Section 1331 is of no assistance to petitioners, who patently fail to allege the $10,000 jurisdictional prerequisite.

28 U.S.C. § 1331 is a slender reed on which to support this action, and its use was properly rejected by the Court of Appeals. That section requires a controversy arising under the Constitution, laws or treaties of the United States and involving $10,000 or more. It is beyond dispute that the monetary jurisdictional requirement is to be computed from the standpoint of the plaintiffs' injury. *Teeval, Inc.* v. *City of New York,* 92 F. Supp. 827 (S.D.N.Y. 1949). It must be computed on basis of "matter directly in dispute in any particular cause" and not on its collateral effects. *Quinault Tribe* v. *Gallagher,* 368 F. 2d 648, 654 (9th Cir. 1966), cert. den. 387 U. S. 907. None of

the plaintiffs here alleged damages even remotely approaching the $10,000 limitation.* And it is clear that the plaintiffs' claims may not be aggregated for the purpose of reaching the monetary requirement. *Snyder* v. *Harris*, 394 U. S. 332, *supra*. Welfare is a privilege for which an individual must apply and satisfy specific standards in order to qualify. There is plainly here no "single title or right in which [the plaintiffs] have a common and undivided interest." (*Snyder, supra,* at 335.) As this Court held, "to allow aggregation of practically any claims of any parties that for any reason happen to be brought together in a single action * * * would seriously undercut the purpose of the jurisdictional amount requirement" (*id.* at 340). The class action device was rejected as a means of avoiding the jurisdictional *sine qua non* of §1331.**

The District Judge circumvented the inapplicability of §1331, however, through the invention of a new jurisdictional theory, unsupported by any case, in which he de-

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* Although the plaintiffs were carefully culled out of hundreds of thousands of welfare recipients, the plaintiff alleging to lose the greatest amount (Duffy) will, at her own figures, lose $174.40 on a monthly basis (17)—far short of the jurisdictional threshold. And even this amount represents the alleged reduction in allowance of her entire family. Even assuming all the reduction were attributable to her, it would take four years and ten months before this reduction amounted to $10,000—assuming she were on welfare throughout, and that levels of payment remained unchanged. This figure also ignores the difference in the real benefits received by her resulting from food stamps, purchase of services, etc., as well as the payment of rent and fuel which are paid separately. This illustrates the speculative, conjectural nature of petitioners' attempts to satisfy the $10,000 jurisdictional prerequisite, as even the District Court held (173).

** The legitimacy of this suit as a "class action" (R. 23, Fed. R. Civ. P.) is itself open to serious question, since in contrast to *Shapiro* v. *Thompson* (394 U. S. 618 [1969]), *King* v. *Smith*, and other genuine class actions involving welfare recipients, admittedly not all AFDC recipients in New York are detrimentally affected by the statute and thus the extent of petitioners' "class" is so nebulous as to render the concept inapplicable.

duced that "indirect damage" to the plaintiffs, who receive the highest welfare benefits in the country (see table appended to this brief, B-2),* would be analogous to that of a starving "Biafran child" (174), and thus in excess of the $10,000 prerequisite. This flies in the face of this simple, quite specific statute and would confer federal jurisdiction wherever a claim of physical or mental injury could be asserted. This is simply not the law. See *Boyd* v. *Clark, supra,* 287 F. Supp. 561, 564, aff'd on another issue 393 U. S. 316:

> "It is firmly settled law that cases involving rights not capable of valuation in money may not be heard in federal courts where the applicable jurisdictional statute requires that the matter in controversy exceed a certain number of dollars."

Moreover, it was petitioners and not their children who had to satisfy these jurisdictional requirements. And aside from the irony of alleging the threat of such injuries where the challenged statute increases the benefits of nearly as many recipients as it reduces, consideration of this claim of possible psychic damage was improper under every relevant decision. See, in addition to *Boyd* v. *Clark, Dermody* v. *Smith,* 88 F. Supp. 620 (N. D. Ind. 1949); *Reese* v. *Holm,* 31 F. Supp. 435, 441 (D. Minn. 1940) ("Sheer conclusions and assertions of collateral damage are not pertinent or competent in determining the amount in controversy"). See also *Quinault Tribe* v. *Gallagher, supra,* 368 F. 2d at 655; *Vicksburg, S. & P. R. Co.* v. *Nattin,* 58 F. 2d 979, 980 (5th Cir. 1932):

> "Jurisdiction is based on actuality, not prophecy, the pressure of a grievance immediately felt and personally measurable in money of the jurisdictional amount. Speculative anticipation that conditions, from which present ills, not now sufficient in amount to give juris-

* Numbers preceded by "B" refer to pages of the table appended to this brief, showing salient characteristics of AFDC programs by states.

diction, flow, may in time aggregate the necessary amount, will not support jurisdiction."

Oestereich v. *Selective Service System*, relied on by petitioners (Br. p. 27), is of no assistance to them. There this Court specifically remanded the proceedings to determine whether the plaintiff could satisfy § 1331.

C. Section 1343 is inapplicable here since the deprivation of no civil right is alleged here.

The Court of Appeals also properly rejected petitioners' attempt to invoke 28 U.S.C. § 1343 here. There was, and can be, no claim here of "deprivation of any right, privilege or immunity secured by the Constitution • • • or by any Act of Congress providing for equal rights" (§ 1343[3]). As the Court noted, the complaint made no such allegation since petitioners "have no rights under federal law to any particular level of AFDC payments or, indeed, to any payments at all" (226). Section 1343 was enacted to fortify the Fourteenth Amendment (*Hackin* v. *Lockwood*, 361 F. 2d 499 [9th Cir. 1966], cert. den. 385 U. S. 960) and clearly has no applicability here. *New York* v. *Galamison*, 342 F. 2d 255 (2nd Cir. 1965), cert. den. 380 U. S. 977; *Bradford Audio Corp.* v. *Pious*, 392 F. 2d 67 (2nd Cir. 1968). There is no constitutionally protected right to receive welfare allowances, let alone at any particular level. The inapplicability of § 1343 is patent. *Clark* v. *Washington*, 366 F. 2d 678 (9th Cir. 1966); *Howard* v. *Higgins*, 379 F. 2d 227 (10th Cir. 1967); *Booth* v. *General Dynamics Corp.*, 264 F. Supp. 465, 470 (N. D. Ill. 1967).

Moreover, § 1343 may not be used as a vehicle to raise claims of a monetary nature. *Gray* v. *Morgan*, 371 F. 2d 172 (7th Cir. 1966), cert. den. 386 U. S. 1033; *Abernathy* v. *Carpenter*, 208 F. Supp. 793 (W. D. Mo. 1962), aff'd 373 U. S. 241; *Alterman Transp. Lines, Inc.* v. *Public Service Commission*, 259 F. Supp. 486, 492 (M. D. Tenn. 1966), aff'd 386 U. S. 262, reh. den. 386 U. S. 1014.

It would be ludicrous to describe § 602(a)(23) as "an Act of Congress providing for the equal rights of citizens" within § 1343(3). In fact if fortifies the utterly *unequal* scheme of welfare allowances which exists in the various states and which has been left untouched by Congress, and under which New York and a few other states pay AFDC allowances vastly higher than those of other states—and a majority of the states are actually permitted to pay less, in most cases far less, than their own announced standards of need. As we have seen, while New York pays an average of $278.00 (including rent and fuel for heating) to a family of four on AFDC, Alabama pays $89.00 and Mississippi $55.00 (See Table). Furthermore, the system of special grants which petitioners seek to reinstitute provided repeated instances of unequal treatment among AFDC recipients within a State.

Section 1343(4), also relied on by petitioners, is not helpful to them. That section permits suit for damages or equitable relief under an Act of Congress providing for protection of civil rights, including the right to vote. Not only is no such statute involved here, but, in any event § 1343(4) is "merely [a] technical amendment to the Judicial Code so as to conform it with amendments made to existing [substantive] law by the preceding section of the bill" (the Civil Rights Act of 1957). See U. S. Code Cong. and Admin. News, 85th Cong. (1957), p. 1976, House Rep. No. 291.

D. Section 1983 fails to support an attack on a State legislative act.

42 U.S.C. § 1983 was likewise properly held not to confer jurisdiction here. That section must be read with § 1343 and, like it, may not be employed as a means of obtaining jurisdiction of an alleged loss of money. *Howard* v. *Higgins*, 379 F. 2d 227, 228, *supra; Bradford Audio Corp.* v. *Pious*, 392 F. 2d 67, 72, *supra; New York* v. *Galamison, supra.*

In addition, as the Court of Appeals ruled, respondents, a State official and Department, are not "persons" within the meaning of § 1983 in an action of this sort, where the complaint constitutes an attack on a statute, not on any act of respondents. *Clark* v. *Washington, supra,* 366 F. 2d 678, 681; *Williford* v. *California,* 352 F. 2d 474 (9th Cir. 1965).

E. The doctrine of pendent jurisdiction was inapplicable here where the sole constitutional claim was dismissed in the earliest stages of the litigation.

The District Judge, in an attempt to cling to this action despite the lack of any jurisdictional toehold, relied on the doctrine of pendent jurisdiction as set forth in *United Mine Workers* v. *Gibbs,* 383 U. S. 715 (1966). That decision provided no authority for the acquisition of jurisdiction by the District Judge once the only Court which had jurisdiction of the constitutional claim—the 3-judge Court—was dissolved. Dissolution of the 3-judge Court was clearly proper and was correctly affirmed by the Court of Appeals (220-221). The equal-protection issue was rendered moot by the amendment to § 131-a(4) which authorized respondent Commissioner to increase the level of allowances in any county to the New York City level, which provided those petitioners resident outside New York City with an available remedy in the state courts to compel respondents to raise the level of their allowances. As the Court noted (220), in fact the Commissioner did, shortly thereafter, increase the levels of payment to AFDC recipients in Nassau County, where the petitioners here involved resided.

Subsequently, *Rothstein* v. *Wyman* was commenced (see p. 14, fn., *supra*), raising the equal-protection claim alone. It was originally brought by recipients of adult welfare assistance. The Court preliminarily enjoined respondents from paying higher allowances to City than to non-city recipients. By order dated October 22, 1969 it permitted AFDC recipients to intervene on behalf of their

class, and extended the injunction to them. These orders are now on appeal to this Court. The pendency of that suit and the injunctions completely protects the present petitioners, and would moot the equal-protection issue here even if it were not already moot. We earnestly submit, moreover, and will contend on the appeal from these preliminary injunctions, that the slight difference in schedules between New York City and other welfare recipients was a valid exercise of legislative discretion, based on recognition of the greater real social cost of living in New York City where even minimal recreational facilities for children are typically distant, and the need for laundry, locks, and other items greater. Such a rational legislative policy does not violate the Equal Protection Clause. *McDonald* v. *Bd. of Election Commissioners*, 394 U. S. 802 (1969); *McGowan* v. *Maryland*, 366 U. S. 420 (1961); *Lampton* v. *Bonin*, 299 F. Supp. 336, 342-344 (E. D. La. 1969).

After the dissolution of the 3-judge Court here there could be no pendent jurisdiction in the single District Judge, who was not empowered to consider the Constitutional claim in the first place.

As the Court of Appeals stated (221-222):

> "Since the single judge at no time had jurisdiction over the constitutional claim there was never a claim before him to which the statutory claim could have been pendent. If the three-judge Court had attempted to give the single judge power to adjudicate the statutory claim, it could not have done so, since with the dissolution of the three-judge Court the statutory claim was no longer pendent to any claim at all, much less to any claim over which the single judge could exercise adjudicatory power."

Even if the pendent jurisdiction doctrine were applicable, it is, as this Court held in *United Mine Workers*

v. *Gibbs*, discretionary only. And here, even if the pendent jurisdiction doctrine could be employed, its use was improvident on the very grounds of comity and predominance of state issues referred to in *Gibbs* (pp. 726-727; fn. 15). See also *McFaddin Express, Inc.* v. *Adley Corp.*, 346 F. 2d 424, 427 (2nd Cir. 1965); *Peace* v. *City of Center*, 372 F. 2d 649 (5th Cir. 1967).

It was, as the Court of Appeals found, an abuse of the District Judge's discretion to retain jurisdiction over the statutory contention—especially where there existed no authority for the litigation of the latter claim in the District Court. In *United Mine Workers* v. *Gibbs, supra*, the very case relied on by the District Judge, this Court expressly stated (383 U. S. at 726-727):

> "Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. *Certainly if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.* Similarly, if it appears that the state issues substantially predominate, whether in terms of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought, the state claims may be dismissed without prejudice and left for resolution to state tribunals." (Emphasis supplied.)

For these reasons the Court of Appeals found retention of this suit under the guise of pendent jurisdiction to be particularly "inappropriate here, where, whatever the technical consequences of enjoining enforcement of Section 131-a may be, the practical effect of an injunction is to order the New York legislature to appropriate more funds for welfare. A federal court should not assert such power over a state legislature unless there is no possible alterna-

tive. Even if the district judge had had discretion, he should have refused to rule on the statutory claim" (222).

The Constitutional claim was never seriously pressed by petitioners. They actively opposed the convening of the three-judge Court (259-271). Petitioners' counsel acknowledged in opposing the three-judge Court that the equal protection claim was tacked on as a device for obtaining jurisdiction (269):

> "I think it plain that our two claims here are discrete and severable, though they form part of one case only in a pending [sic] jurisdiction case."

To sanction that device would truly be "to wag the jurisdictional dog by his non-jurisdictional tail"—a practice condemned as "improper and clearly subject to jurisdictional attack upon appeal." *United States* v. *General Ins. Co.*, 247 F. Supp. 543, 546 (N. D. Cal. 1965).* This is especially so since the District Judge himself concurred in the dissolution of the three-judge Court (133, 136). Since the proof in support of the two claims was disparate, retention of the case was plainly improper (*Musher Foundation, Inc.* v. *Alba Trading Co., Inc.*, 127 F. 2d 9, 19 [2nd Cir. 1942]). Moreover, an important consideration in determining whether pendent jurisdiction should be invoked is "the proper function of a federal court in our federal system"

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* That case aptly held it "axiomatic" that the pendent jurisdiction doctrine "ought to be strictly applied. The doctrine of pendent jurisdiction was never intended, nor should it be used, as a free ticket to federal jurisdiction." It quoted with approval *Walters* v. *Shari Music Pub. Corp.*, 193 F. Supp. 307, 308 (S.D.N.Y. 1961), which dismissed a pendent non-federal issue where the federal issue had been dismissed on a motion for summary judgment:

> "* * * there is a considerable difference between a federal claim which fails during trial and one which has been dismissed on pre-trial motion. In the latter situation—the one presented in this case—there has been no substantial commitment of federal judicial resources to the state claim at the time the federal claim is rejected."

(*United States* v. *Gregor J. Schaefer Sons, Inc.*, 272 F. Supp. 962, 967 [E.D.N.Y. 1967]). What the District Judge did here was explicitly condemned in *United Mine Workers* v. *Gibbs*, which held that "recognition of a federal court's wide latitude to decide ancillary questions of state law does not imply that it must tolerate a litigant's effort to impose upon it what is in effect only a state law case." 383 U. S. at 727.

F. The Eleventh Amendment bars this suit to invalidate a State statute, particularly in the field of financial administration.

In addition to the absence of any affirmative jurisdictional basis under any federal statute, the Eleventh Amendment and basic principles of sovereign immunity stand as a complete bar to this action. This is a case in which defendants Wyman and the Department of Social Services are named only in their official capacity. No wrongdoing or tortious act of theirs is alleged. Nor is there any Constitutional question. The sole contention is that the State statute is invalid. In such a case the Eleventh Amendment forbids suit in the federal courts. *Parden* v. *Terminal Ry. of Alabama*, 377 U. S. 184, 186 (1964); *Clark* v. *Washington, supra*, 366 F. 2d 678, 680. The fact that New York State was not expressly named as a party defendant "is immaterial, as the Eleventh Amendment applies to all cases in which the state is a real, even though not a named, party defendant." *Meyerhoffer* v. *East Hanover Tp. School Dist.*, 280 F. Supp. 81, 84 (M. D. Pa. 1968); *Parden* v. *Terminal Ry., supra.*

As this Court held in *Great Northern Ins. Co.* v. *Read*, 322 U. S. 47, 54 (1944), "where we are dealing with the sovereign exemption from judicial interference in the vital field of financial administration a clear declaration of the state's intention to submit its fiscal problems to other courts than those of its own creation must be found." See also *Taylor* v. *Cohen*, 405 F. 2d 277, 281 (4th Cir. 1968);

Larson v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682, 695 (1949), reaching the same conclusion on principles of sovereign immunity alone, in suits against federal officers where the Eleventh Amendment does not apply.

In *Williams* v. *Dandridge*, 297 F. Supp. 450 (D. Md. 1968), prob. jurisd. noted Oct. 13, 1969 (38 LW 3115), the three-judge Court, while allowing the action since a denial of equal protection was asserted, specifically held that "to the extent that the prayers of the complaint might be construed to require the Governor and General Assembly of Maryland to appropriate additional moneys to make larger payments to plaintiffs, such relief was barred by the Eleventh Amendment." 297 F. Supp. at 452, fn. 1. See also *id.* at 459 (quoted on p. 60 of this brief).

Even in *King* v. *Smith*, this Court expressly noted (392 U. S. at 312, fn. 3) that "we intimate no views as to whether and under what circumstances suits challenging state AFDC provisions only on the ground that they are inconsistent with the federal statute may be brought in federal courts." This suit was clearly improper under these fundamental doctrines.

Moreover, *King* v. *Smith*, unlike this suit, involved a challenge to an administrative regulation which was promulgated by the defendant commissioner (or his predecessor), and could have been repealed by him in his discretion. Here a statute is attacked, which respondents must administer and are without power to alter.

G. The pendency of proceedings before HEW rendered it improvident for the District Judge to have exercised jurisdiction here.

It is undisputed, and the Court of Appeals repeatedly noted (223, 233-234), that HEW has commenced its own administrative proceeding to determine whether § 131-a conforms to the Social Security Act's provisions. It has

requested respondents to provide detailed information regarding the statute (108 *et seq.*) which respondents have supplied (139-142, 143, 166), and, pursuant to 42 U.S.C. §§ 601 *et seq.*, must determine whether the statute conforms to federal standards for eligibility to receive federal funds. It is plain that HEW is the federal administrative agency with primary jurisdiction here and under basic principles the courts should defer to HEW's expertise in this area. Its determination would be judicially reviewable by any party aggrieved, as Judge LUMBARD noted (234).

Petitioners, insisting that HEW be short-circuited, rely on *King* v. *Smith*. But the posture of this case is in sharp contrast to the situation in *King* v. *Smith*, where HEW had for years approved the challenged Alabama regulation. Here, irrespective of this litigation, HEW must for the first time itself determine whether § 131-a meets its requirements for New York's eligibility in the federal program. There is no suggestion that this review was delayed or that HEW might use improper standards.

In such a situation this suit, unlike *King* v. *Smith*, was premature. For this reason respondents moved to join HEW, which has primary jurisdiction over the highly technical question posed by this litigation, as a necessary party defendant (Fed. R. Civ. Pro. 19[a][1]), both because of its primary jurisdiction or at least expertise to which the judiciary should in the first instance defer (see *Catholic Medical Center* v. *Wyman*, —— F. Supp. —— [E.D.N.Y., 69 Civ. 641, 3-judge Ct.]),* and also because

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* In that case, the Court (FRIENDLY, C.J., MISHLER, D.J. and JUDD, D.J.) confronted with a challenge to a 1969 New York statute temporarily freezing the State rate of reimbursement for hospital services furnished medicaid patients, by decision dated October 21, 1969 deferred determination as to the validity of the statute (claimed to violate the Constitution and Social Security Act provisions) "until the United States Secretary of [HEW] has an opportunity to express his views." The Court went on:

(*footnote continued on following page*)

New York's eligibility for federal aid is the only proper issue raised by the alleged conflict between § 602(a)(23) and § 131-a and thus, without a responsible federal official, "a final decree cannot be rendered between the other parties * * * without leaving the controversy in such a situation that its final determination may be inconsistent with equity and good conscience." *Turner* v. *Brookshear*, 271 F. 2d 761, 764 (10th Cir. 1959). The motion to join HEW was denied by the District Judge (34-36). But the Court of Appeals recognized that HEW, "now engaged in a study of the relationship between Section 602(a)(23) and Section 131-a," possessed "acknowledged expertise" in the specific field and "is far better equipped than the federal courts to review [the] alleged inconsistency" (223). *United States* v. *Western Pacific R. Co.* 352 U. S. 59 (1956); *United States* v. *Manufacturers Hanover T. Co.*, 240 F. Supp. 867, 882 (S.D.N.Y. 1950). The issue sought to be litigated here is clearly within the scope of the special knowledge and experience of the agency. Moreover, this is a case in which HEW must deal with an intricate program affecting all 50 States and involving various and competing policy considerations—a situation not conducive to judicial intervention on a case-by-case basis. See *World Airways, Inc.* v. *Northeast Airlines, Inc.*, 349 F. 2d 1007, 1010 (1st Cir. 1965), cert. den. 382 U. S. 984.

Grant-in-aid programs in general, and the AFDC sections of the Social Security Act in particular, regulate the

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(*footnote continued from previous page*)

"There is precedent for holding a case until an administrative determination can be made. *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 619 (1944).

"Since H.E.W. is not a party to this litigation, it seems proper to defer decision of the motions for a short period in order to hear from the Department. It may be that H.E.W. has dealt with similar problems in some other state, that it has relevant negotiations underway, or that it will point to some part of the statutory scheme for its participation that we have overlooked."

relationship between the federal agency and the State government and do not directly create justiciable issues between an individual and the state government. This is not a case where there has been extended inaction by the agency. See *King* v. *Smith, supra.* At least in the first instance the administrative agency should assess the complicated factual issues with which the Court below was grappling. See *Secretary of Agriculture* v. *Central Roig Refining Co.*, 338 U. S. 604, 618 (1950). For this reason alone, all else aside, the complaint was properly dismissed.

POINT II

The Court of Appeals properly held that New York's AFDC program fully complied with any reasonable interpretation of 42 U.S.C. § 602(a)(23). That subsection does not, and was not intended to, fix mandatory levels of payment or empower the judiciary to invalidate a State statute establishing levels of welfare payment.

Even if petitioners had overcome the jurisdictional obstacles to this suit, the assault on New York's welfare allowance statute would still fail. Neither the wording nor the background of § 602(a)(23) justify the extraordinary burden petitioners seek to place upon it. New York fully complied with it. And aside from the ample demonstration of compliance, petitioners' construction of that statute strains it to the breaking-point.

New York's welfare program long antedated the Social Security Act of 1935 and its levels of payment have always outpaced whatever federal standards existed. The present New York allowances, both before and pursuant to the 1969 legislation, have consistently been, and are, the nation's highest (B-2, *infra*). Indeed, it was New York's Public Welfare Law of 1929, which shifted the emphasis in welfare from institutional care to meeting the needs of

dependent children in their own homes, which was the precursor of subsequent federal legislation. In the specific field of AFDC New York's level of payments exceeds every other state's as we have seen (pp. 11-12, *supra*).* New York has always paid the full standard of need to every AFDC recipient. It has never imposed a maximum amount on aid to families, a residency requirement for eligibility, or a substitute-father provision. It has always paid identical allowance to all welfare recipients without distinction between AFDC and others.** It has consistently been the vanguard of enlightened and progressive legislation in the social-welfare field, and the institution of this suit by the National Welfare Rights Organization challenging its levels of payment is ironic. Petitioners themselves acknowledge that New York is "a leadership state in AFDC" (Br., p. 33).

The Social Security Act provisions governing federal participation in the States' AFDC programs are significant for what they omit. Congress has never exercised its undoubted power to regulate, as a condition of federal grants, the amounts paid by the States under their AFDC programs. It has never even required States to pay their full professed standard of need, or established minimum amounts for such standards of need. As this Court noted in *King* v. *Smith* (392 U. S. at 318), "each State is free to determine the level of benefits by the amount of funds it devotes to the program." Thus a situation has been permitted by Congress to continue in which both the standards of need fixed by the States, and the actual allowances

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* New York's rate of assistance far exceeds that found by Congress to be an adequate level for the District of Columbia. A family of four in New York received $278 per month in 1968; a similar family in the District of Columbia received $184.

** In fact, petitioners complain that New York City recipients, who include a disproportionately high number of AFDC recipients, receive more than those outside the City where relatively fewer welfare recipients are in that category.

paid, vary enormously. In this context it is disingenuous for petitioners to speak of "paramount" federal law and "pervasive federal concern" (Br. pp. 22, 24) where Congress has so totally refrained from action.

Petitioners, as did the District Judge, attempt to paint AFDC as a coherent, unified national program in which the federal government plays a major role in determining levels of allowances. See, e.g., Pet. Br. p. 11, speaking of "national program objectives." This is palpably at odds with the facts. There are, as a result of Congress' failure to establish national standards for allowances, 50 separate state AFDC programs (together with the District of Columbia, the Virgin Islands and Puerto Rico) of enormously disparate levels of payment. See table appended hereto. The only nationwide pattern is that required by the Constitution (see, e.g., *Shapiro* v. *Thompson*) or by the provisions of the Social Security Act itself, which distinctly avoids regulation of state levels of payment.

Section 602(a)(23), upon which petitioners totally rely here (except for the mooted equal protection claim), in its entirety states:

> "[The states shall] provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

The plain wording of this section is that "the amounts used by the state to determine the needs of individuals" —the standard of need of each state—and any maximum imposed on the total paid to families are to have been increased by July 1, 1969 "to reflect fully changes in living costs since such amounts were established."

The maximum on aid to families may be excised from this case. New York has never imposed, and does not now impose, any family maximum. And New York has annually adjusted its standard of need to reflect living costs, and did so in 1968, in compliance with § 602(a)(23). The levels of payment embodied in the statute at bar were based on these 1968 administratively-established levels and fully reflected the 1968 cost-of-living adjustment (90, 102-105). They completely comply with the provisions of § 602(a)(23).

As we have shown, and as the Court of Appeals stated (231), the levels contained in § 131-a represent a valid legislative determination to adopt the universally-approved flat-grant system and eliminate the invidious, administratively unwieldy patchwork of monthly allowances and special grants which previously existed. As the record shows, the special-grant arrangement gave undue advantage to the more sophisticated welfare recipients and to those to whom legal services were more readily available. It consumed huge portions of the time of caseworkers and State and county welfare officials in determining eligibility for special grants and administrative appeals from denials of special grants. Adoption by New York of the flat-grant approach freed these people for counseling activities.

Moreover, the averaging of ages of oldest children alone relieved State and local officials of the necessity of recomputing the monthly allowance of every AFDC family—886,000 recipients as of 1968—whenever its oldest child reached a higher bracket (every two years in most cases).* This alone was a herculean administrative

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* Petitioners express concern for "the greater nutritional, social and educational needs of older children" (Br., p. 14) but ignore the additional costs of layette, pharmaceuticals, etc. in the case of infants. This is precisely the sort of determination which should be left to the expertise of the officials actually administering the program.

task, time-consuming, and unfair to recipients when the local officials failed to promptly increase their allowances. The New York Legislature had every right to adopt the more enlightened, administratively streamlined flat-grant system, and its acts are entitled to a strong presumption of validity (*Ferguson* v. *Skrupa*, 372 U. S. 726 [1963]; *McDonald* v. *Bd. of Election Commissioners*, 394 U. S. 802, *supra*). Especially where a conflict between state and federal law is asserted, a powerful presumption runs against such conflict even in fields where federal law is clearly paramount. See *Joseph E. Seagram & Sons, Inc.* v. *Hostetter*, 384 U. S. 35 (1966), reh. den. *id.* 967.

For these reasons there was, as the Court of Appeals held, full compliance by New York with the requirements of § 602(a)(23). The plain meaning of that terse, unambiguous amendment, as we have shown, is that each State was to increase its standard of need, and family maximum if any, during the period specified—and this New York did. That finding is bolstered by the legislative history of the subsection. As proposed by the administration,* it would have been the significant shift in the federal government's anachronistic policy of laissez-faire with regard to State levels of welfare allowance which petitioners, indulging in wishful thinking, insist it to have been.

The bill was originally designed to require each State to pay its entire standard of need. This itself would have comprised a massive change in the pattern of welfare payments throughout the country. Numerous states, including several in which the number of welfare recipients is high, pay amounts far below their admitted standards of need. See the table reproduced as an appendix to this brief, and HEW's chart (106). We have already noted that Alabama's standard of need for a family of four on AFDC is $177 but the allowance actually paid is $89. Missouri's standard of need is $305 but it pays $124. (See fn., p. 12, *supra*.)

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* H.R. 5710 (90th Cong., 1st Sess.) § 202.

In addition, the proposed amendment would have required each State to increase its standard of need—and therefore its amount actually paid—annually henceforth. These proposals reflected HEW's expressed concern that in some states allowances were so low that those states did not even meet their own professed standards of need. See the Section-by-Section Analysis of H.R. 5710 prepared by HEW for the House Committee on Ways and Means, pp. 36-39*; Statement by John W. Gardner, Secretary of HEW, before Committee on Ways and Means on H.R. 5710, March 1, 1967, p. 3; Statement by Secretary Gardner on H.R. 12080 (90th Cong., 1st Sess.) before Senate Committee on Finance on August 22, 1967, pp. 7-9.

HEW never recommended that a floor be placed on the states' existing levels of assistance. Indeed, such a policy would have been counter-productive, only solidifying the extraordinary inequities in the welfare programs of the various states. Thus, petitioners' repeated citations to the Department's concern for the low levels of assistance are *non-sequiturs* here. Their construction of the statute could not eliminate these glaring inequalities in any event.

Nonetheless, the concern of HEW for low levels of assistance was not the concern of Congress. The House of Representatives rejected the administration bill and substituted its own, H.R. 12080, which contained no requirement with regard to standard of need or levels of assistance for AFDC recipients at all.

The Senate, however, passed a bill requiring annual updating (as HEW had requested), but not requiring full

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* Petitioners have cited this document as if it were a Committee report. See, for example, Pet. Br. p. 32, fn. 26. In fact, however, the face of the Section-by-Section Analysis contains the following caveat:

> "* * * printed for informational purposes only, so as to make the material contained therein generally available. Neither the bill nor the analysis and explanation thereof has been considered or endorsed by the Chairman or any Member of the Committee on Ways and Means."

payment by each State of its standard of need, or even increases in standard of need. The Senate Finance Committee, in dealing with the AFDC program, also emphasized its concern with the increasing number of recipients (Report of Senate Finance Committee to accompany H.R. 12080, No. 744, November 14, 1967, U.S.C. Cong. and Admin. News, 90th Cong., 1st Sess. [1967], p. 2981). That report contains no expression of concern over the low levels of payments to AFDC recipients. No reference is made to § 213(b) (the enactment of § 602[a][23]) in any summary within that lengthy report. It is described only in the Section-by-Section Analysis as requiring (*id.* at 3133):

> "a State plan for the dependent children program to provide that by July 1, 1969, and at least annually thereafter, the amounts used by the State to determine the needs of individuals will be adjusted to reflect fully changes in living costs since such amounts were established, and that any maximums that the State imposes on the amount of aid paid to families will be proportionately adjusted."

By contrast, the Committee did require an increase in the actual payments made to recipients of old-age assistance.* With regard to the aged, the Committee described § 213(a)(1)(D) as requiring (*id.* at 3132):

> "a State plan for old-age assistance, effective July 1, 1968, to provide that the standards used for determining the need of applicants and recipients for and the extent of such assistance under the plan, and any maximum on the amount of assistance, will be so ***modified that an increase in the amount of assistance and other income will not be less than $7.50 per month per individual (determined on an average per in-***

*This increase was mandated because Congress was concomitantly providing increases in social security payments which would decrease the budget deficit for many such persons. For AFDC, the states received no such additional federal resources. On the contrary, Congress was attempting to limit expenditures for AFDC.

dividual in accordance with standards prescribed by the Secretary) above such amount of assistance and other income available under the standards and maximum applicable under the plan on December 31, 1966." (Emphasis supplied.)

Thus, with regard to AFDC the amounts used to determine the needs were to be adjusted and any maximums proportionately adjusted, whereas with regard to the aged, the standards used for determining the needs and any maximums were to be "modified" so that there was an actual mandated increase of at least $7.50 per individual. This was a substantial amendment and was given a great deal of attention by the Senate Committee (e.g., *id.* at 3006-07). The Senate explicitly rejected as too costly a parallel increase for AFDC recipients amounting to $4.00 per month per person. 113 Cong. Record 16963-64 (Nov. 21, 1967; daily ed.).

The HEW bill (H.R. 5710) contained a $60,000,000 appropriation for fiscal 1970 alone—persuasive proof of the far-reaching change it was to have wrought in equalizing the crazy-quilt of welfare allowances. See HEW's *amicus* brief in *Lampton* v. *Bonin* (299 F. Supp. 336 [E. D. La. 1969]) (A-24), outlining in detail the legislative history of § 602(a)(23). Moreover, Senate Finance Committee hearings yielded estimates that these requirements of the original bill would entail additional costs to the federal government of $150,000,000 annually if the states were to pay their full standard of need (as New York has always done), and an additional $100,000,000 more per year to cover the annual updating. For AFDC alone, the figures were $95,000,000 and $90,000,000, respectively (A-23, 24).

However, the Senate Finance Committee's estimate for appropriations conclusively refutes any notion that the new amendment would affect AFDC expenditures. The Senate estimated its expenditures for the fiscal year 1968

and for the fiscal year 1972 for AFDC costs. (U. S. Code Cong. and Admin. News [1967], *supra*, p. 3012.) There was no difference between the House bill and the Senate Committee bill despite the inclusion of § 602(a)(23) in the latter. There was only a very moderate increase in projected expenditures between 1968 and 1972. The Committee specifically stated that its cost assumptions were "based on the experience of the past several years; allow[ing] increase of $1 each year in the average monthly payment per recipient, in line with recent experience" (*id.* at 3012). In effect, petitioners are asking the courts to overrule Congress' decision not to appropriate these millions of dollars.

This stark reduction in the effectiveness of the proposal is dramatically illustrated by the Senate vote. The original proposal was carried over the dissent of Senators Bennett, Curtis, Holland, Stennis, Thurmond and Williams (Del.). The final version adopted, following House of Representatives passage and emergence from the conference committee, was approved by all except Senators Brooke, Case, Harris, Hart, Javits, Kennedy (Mass.), Kennedy (N. Y.), Metcalf, Mondale, Nelson, Proxmire, Tydings, Williams (N. J.) and Yarborough. The disparity between these rosters speaks volumes.*

Thereafter the Conference Committee further compromised the already modest section and eliminated the requirement for annual updating. Its report (U. S. Code Cong. and Admin. News [1967], p. 3209) stated that § 602(a) (23) "would require States to make only one adjustment before July 1, 1969, *after which date the provision would not apply.*" (Emphasis supplied.)

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* It is noteworthy that both of New York's Senators went on record as favoring annual mandatory updating by every State. Petioners concede as much (Br. p. 44, fn. 55).

The House vote was not similarly demonstrative since all of the Social Security amendments were voted on there in one package.

The actual bill which this Conference Committee reported—enacted without further change—reveals that the sole purpose of the 1967 amendments was to reduce AFDC expense. Amendments were added to reduce the welfare rolls, to encourage recipients to work, to require deserting fathers to support their families, to increase administrative control over the care of the children in their homes (see, *e.g.*, *id.* at 2981-3002). This was the very bill which enacted the "AFDC freeze" (H.R. 12080, § 208) which prevented federal financial participation in AFDC payments to the extent that the number of AFDC recipients exceeds the proportion of such recipients to the total under-21 population of any state in the first quarter of 1967.

Thus, the bill that emerged as § 602(a)(23) was the same flask with the wine changed to water. Both the full-standard of need requirement and the annual updating provision had been removed. To characterize these excisions as emasculation would be understatement. All that remained was the provision, enacted by § 602(a)(23) as passed, that the states adjust their standards of need on a one-shot basis, and their family maximums if any. The view of the statute advanced by petitioners is in fact the proposal Congress specifically rejected.

For these reasons the Court of Appeals spoke of "the rejection by Congress of the much more stringent bill originally proposed. That rejection demonstrated an intent not to impose controls on the levels of benefits set by the States. The Congressional action was entirely consistent with the traditional federal policy of granting the States complete freedom in setting the level of benefits" (229).

The Court likewise noted that the House Conference Report (No. 1030, 90th Cong., 1st Sess. [1967]), appearing in U. S. Code Cong. & Admin. News (1967) 3208-09, described a comparable provision concerning old-age benefits as requiring "each state to adjust its standards for determining need, *the extent of its aid or assistance,* and the maximum amount of the aid or assistance payable," but—in sharp contrast—discussed § 602(a)(23) as merely requiring each

state to "adjust its standards so as to reflect current living costs and make proportionate adjustments in any maximums on the amount of aid" (emphasis supplied) (229). See also Senate Committee Rep., *id.* at 3132.

Further, as the Court observed, § 602(a)(23) was not even mentioned in the Summary of 1967 Social Security Act amendments published by the Senate Finance and House Ways and Means Committees, or in the Senate Finance Committee's Report's "Summary of Principal Provisions" of the 1967 amendments (230-231). As HEW cogently remarked regarding § 602(a)(23) in its brief in *Lampton* v. *Bonin* (in a comment quoted with approval by the Court here [A-8]), "The Congress could hardly have paid less attention to it." Yet this is the amendment from which petitioners seek to draw far-reaching powers.

HEW's contemporaneous construction of § 602(a) (23) supports this view. It is axiomatic that the construction provided by the agency charged with the responsibility of enforcement of the Social Security Act is entitled to great weight in eliciting the intent of Congress. *Udall* v. *Tallman*, 380 U. S. 1 (1965). HEW's analysis of § 602(a) (23), set forth at length in its *Lampton* brief (A-1 *et seq.*), furnishes additional and powerful evidence of legislative intent. It characterizes § 213(b) of P. L. 90-248, which was enacted as § 602(a) (23), as "in part an attempt to avoid the appearance of doing nothing in the ADC program. It was a gesture of uncertain meaning and effect, suggesting on its surface something more than it actually required on closer inspection" (A-25).

Again, the HEW brief noted as "quite significant" that the suggested $4-per-month across the board increase to all AFDC recipients (to correspond to a projected $7.50-per-month increase in the adult assistance categories) was "rejected without even a division of the yeas and nays" (A-25). As HEW remarked, "the Senate was unwilling to require what would be an actual cost-of-living increase

of $4 per month, * * *. The Senators seem to have understood clearly that the requirements of Section 213(b) did not guarantee that ADC recipients would actually receive increased payments" (A25, 26).

If further proof were required, HEW's applicable regulation implementing §602(a)(23)—45 CFR 233.20(a)(2)(ii)*—explicitly permits states unable "to meet need in full under the adjusted standard" to "make ratable reductions in accordance with subparagraph (3)(viii) of this paragraph." The latter subparagraph** requires that "if full individual payments are precluded by maximums or insufficient funds, adjustments will be made by methods applied uniformly statewide." The plain language of these regulations implementing §602(a)(23) demonstrates that no more was required than what New York did—and indeed that a State could actually reduce its AFDC payments through ratable reductions consistent with that statute. These regulations were never repudiated or even referred to by Congress. They, together with the wording of the statute and its history, preclude the distortion petitioners seek to impose upon it. Congress' undoubted power to

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* "In the AFDC plan, provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with subparagraph (3)(viii) of this paragraph. Nevertheless, if a State maintains a system of dollar maximums, these maximums must be proportionately adjusted in relation to the updated standards."

** "Provide that payment will be based on the determination of the amount of assistance needed and that, if full individual payments are precluded by maximums or insufficient funds, adjustments will be made by methods applied uniformly statewide."

raise AFDC levels was clearly not exercised when § 602(a)(23) was enacted.

This reading of the amendment dovetails with that given by the Court in the second decision in *Lampton* v. *Bonin*, —— F. Supp. —— (E. D. La. July 15, 1969; WISDOM, C.J. & COMISKEY, D.J.):

> "If Congress had intended to require the states to put a floor on current levels of aid and to increase payments to reflect the increase in the costs of living, it would have been obvious to Congress that such requirements would cost the federal government and the states several hundred million dollars and perhaps as much as five hundred million dollars. A bill clearly having this effect would have been a burning issue on the floors of the House and the Senate."

That Court went on to note that the Senate Committee report "refers only to the provision for the adult categories, and is silent on the ADC provision." It added (*id.*):

> "It is also significant that the cost estimates on the bill as agreed to by the Conference Committee (Table 5 of the Joint Publication, page 28) did not reflect anything for section 213. Clearly, no great cost effect was anticipated."

The Court aptly summed up what § 602(a)(23) did and did not do:

> "Congress rejected the proposal for meeting need, and retained only the provision that the standard used to *determine* need be updated." (Emphasis in original.)

It quoted then HEW Secretary Gardner as "complain[ing]" that "the states are required to set assistance standards for needy persons in order to determine elig-

ibility, but they need not make their assistance payments on the basis of these standards." The Court correctly noted that "[t]he construction HEW places on the statute tips the scales in favor of the defendants," and specifically referred to the regulation authorizing ratable reductions as consistent with the statute.

Petitioners, in an effort to sustain their distortion of the statute, point to its reference to maximums as requiring that the amounts paid to recipients must be increased (Br. pp. 60-72). This is simply a misreading. Maximums "impose[d] on the amount of aid paid to families" is a term of art with a definite meaning in the context of welfare legislation. It refers to dollar maximum amounts limiting the total a family may receive—the provisions held violative of the equal protection clause in *Williams* v. *Dandridge*, 297 F. Supp. 450, *supra*, and *Westberry* v. *Fisher*, 297 F. Supp. 1109 (D. Me. 1969). New York has never employed such maximums.* The claim that Congress' use of that term could have meant all dollar amounts of AFDC payment is patently absurd and is, all else aside, belied by Congress' use of the phrase "any maximums." Since every state has a schedule of allowances paid, whether by statute or by regulation, the word "any" would have been redundant and indeed ambiguous.

As we have seen, § 602(a)(23) had a purpose, albeit modest. If the updating of state standards of need mandated by this section had no significance, and were "meaningless," as petitioners insist, the National Welfare Rights Organization, which instituted this action and is still represented on petitioners' brief, would hardly have commenced its suit in the District of Columbia against HEW

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* There are 19 states with such maximums on aid to families (see Table): Alabama, Arizona, Arkansas, Delaware, Georgia, Kentucky, Louisiana, Maine, Maryland, Mississippi, New Mexico, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia and Wyoming.

(p. 27, *supra*) to compel the states to update their standards of need in accordance with the statute.

Petitioners' attempted analogy with Medicaid (Br. pp. 56-57) is not helpful to their thesis since the federal statutes there do not regulate the levels of aid dispensed by the States—just as § 602(a)(23) does not. And their contention that § 602(a)(23) as construed by the Court of Appeals, HEW, and the three-judge Court in *Lampton* v. *Bonin* is "without meaning" (Br. p. 67) is unpersuasive. The statute achieved its stated, limited purpose—requiring the raising of State standards of need, and family maximums, if any. There is no requirement that Congress solve all the problems in this complex area at once (*McDonald* v. *Bd. of Election Commissioners, supra*), however desirable that might be.

New York's compliance with § 602(a)(23) as it actually reads was, as we have seen, complete. The standard of need employed by New York was defined by former 18 N. Y. Code of Rules and Regulations ("NYCRR") § 352.4 as items of basic maintenance. These items comprising the standard of need in New York have not been altered. Their components have, however, been recalculated annually by New York's Department of Social Services, using professional materials from any sources including those from the United States Department of Agriculture. The standard increased by respondents and approved by HEW in 1968 was a current list of products presently available in the stores of the State. See former 18 NYCRR § 352.4.

All items in New York's standard of need are repriced annually in May. Section 131-a specifically requires such repricing by respondents and their report to the State Legislature by January, in time for the oncoming legislative session. If there is a change of prices of more than 2%, the levels of assistance are adjusted to meet that change. Therefore, § 602(a)(23) was completely irrelevant to New York since it had updated its standards many times since

they had been established. However, assuming § 602(a)(23) required an updating of amounts of need between January 2, 1968 and July 1, 1969 as a prerequisite to federal funding, this was complied with by New York as a matter of course on August 23, 1968 when a new State schedule was adopted pursuant to annual repricing of the approved standard.

Further, § 602(a)(23) requires adjustment by July 1, 1969, which is the effective date of § 131-a.* There is no support for petitioners' assumption that the section, which effectively expires on July 1st, could invalidate legislation which did not become effective until after that date. Congress made it clear that § 602(a)(23) could do no such thing. The Conference Committee Report (U. S. Code Cong. and Admin. News, 90th Cong. [1967], p. 3209) is explicit that the section "would require States to make only one adjustment before July 1, 1969, after which date the provision would not apply."

In addition we have already seen that Congress specifically rejected a provision which would require periodic updating of state standards of need, and explicitly stated that after July 1, 1969 § 602(a)(23) would have no effect. U. S. Code Cong. and Admin. News (1967), *supra,* at page 49. The fact is that § 602(a)(23) requires but one updating of standards of need "to reflect fully changes in living costs since such amounts were established," and New York did this. In the *Lampton amicus* brief (A-27-28), the most cogent expression of HEW's construction of § 602(a)(23), the agency explicitly rejects the suggestion that the section in any way precludes contrary legislative action by the States after July 1, 1969:

> "This presents a problem as to how long the State's action must be sustained. Forever? Five years? One

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*July 1st is a date frequently used for the inception of New York legislation. It falls after the adjournment of the Legislature and gives the Department of Social Services and its local counterparts three months to effectuate its provisions.

year? Less? If the States had been required to reprice their standards every year, it would have been clear that no backsliding was to be allowed. But a one-time action to meet conditions at a specified date is soon overtaken by the press of later developments. There is no indication that the Congress was imposing an immutable, permanent adjustment of payments, regardless of the condition of the State's ADC program or the State's financial condition. This, in turn suggests that, in 1969 itself, room was being left for the play of these factors."

Moreover, § 131-a, although characterized by petitioners as legislating "cutbacks" in welfare allowances (see e.g. Br. p. 12), utilizes the same standard of need as did the levels of payment under § 131 prior to July 1st, as to which no suggestion of non-compliance is made. As we have stated, § 131-a represented the adoption of the flat-grant system based on the repriced 1968 standard of need, averaging ages and eliminating special grants in conformity with the proposals of every enlightened commentator in the field (pp. 7-9, *supra*) and specifically with the proposals of HEW itself as early as 1964 (p. 8, *supra*), which urged both age-averaging and abolition of special grants. HEW approval of state standards of assistance is required, unlike state levels of payment. And HEW does not require any provision for special needs by the states. In fact its policy is to disfavor special grants. Emergencies need not be dealt with by special grants. They may, as New York does, be handled through purchase of services. 18 NYCRR § 352.5. Thus special grants by definition exceeded the standard of need and are uninvolved here. But New York compensated for their elimination by substituting a flat increase of $4.50 per individual per month (93).

In the field of welfare as well as economic regulation the states are and should be, concomitant with the federal

system and to keep that system viable, permitted wide rein in experimenting to find the best solutions to their problems—so long as such experimentation does not transgress constitutional bounds. And petitioners allege no such transgression here.

The strong presumption supporting the validity of the state statute and the equally powerful presumption against conflicts between state and federal law (see p. 45, *supra*) were glossed over by petitioners and by the District Judge. But neither has been rebutted. And here, where the statute is challenged as violating an extremely limited and technical law, the presumption in its favor increases manyfold. What the District Judge attempted here was judicial legislation, expressly condemned, in the context of welfare, in *Snell* v. *Wyman*, 281 F. Supp. 853 (S.D.N.Y. 1968), aff'd 393 U. S. 323. The welfare policy sought to be enacted by the plaintiffs in that case was of a far more limited sort than that which petitioners urge here, yet that 3-judge Court restrained itself in deference to the legislative branch (281 F. Supp. at 862, 863):

> "The plain flaw that nonetheless destroys plaintiffs' thesis is that it is brought to the wrong forum. Plaintiffs' complaints might move us to vote for changes if we sat as state legislators. But they do not approach the showing of irrationality or arbitrariness warranting exercise of the limited veto power of the federal judiciary under the Fourteenth Amendment.
>
> Against plaintiffs' views, as defendants point out, there are arguments of policy which can scarcely be dismissed as frivolous, whether or not we would find them convincing if the judgment of policy were for us. * * *
>
> It is appropriate from time to time to appreciate the full measure and continued vitality of what Mr. Justice Holmes meant when he said: 'The 14th Amendment does not enact Mr. Herbert Spencer's

Social Statics.' Lochner v. State of New York, 198 U. S. 45, 75, 25 S. Ct. 539, 546, 49 L. Ed. 937 (1905) (dissenting). Now that his dissenting thought has won the day, we ought not to trivialize the achievement by viewing it only as the interment of Spencer's social doctrines. The principle applies to the social philosophers that most of us, including judges, find more persuasive than Spencer. If we were free to enforce what we may modestly deem our more enlightened view, we might seriously consider the changes plaintiffs propose. But we have no such power, and it is better in the end for everyone that this is so. * * *

The principle counsels that it is not for federal judges to be 'liberal' or 'conservative' in advancing and ordering measures which undoubtedly relate to basic matters of human decency and welfare. The constricted test in this forum is one of minimal rationality."

See also, in addition to *Ferguson* v. *Skrupa, supra, Osborn* v. *Ozlin,* 310 U. S. 53, 66 (1940) (FRANKFURTER, J.):

"For it can never be emphasized too much that one's own opinion as to the wisdom of a law must be wholly excluded when one is doing one's judicial duty. The limit of our inquiry is reached when we conclude that Virginia has exerted its powers as to matters within the bounds of her control."

Petitioners demand that this Court override that principle, overturn the strong presumption of validity of a state statute, and invade the core of State legislative power—control of its own appropriations (*Great Northern Ins. Co.* v. *Read, supra,* 322 U. S. at 54)—and all this in the utter absence of any justiciable constitutional claim. The injunction issued by the District Judge at petitioners'

suit transcended the outer limits of judicial power. Did he have authority to order the appropriation of additional moneys (in vast amounts) by the state legislature? The Court of Appeals correctly saw (222) that "whatever the technical consequences of enjoining enforcement of Section 131-a may be, the practical effect of an injunction is to order the New York legislature to appropriate more funds for welfare. A federal court should not assert such power over a state legislature unless there is no possible alternative." There was no such Pandora's Box in *King* v. *Smith* or *Shapiro* v. *Thompson*, where invalidating the state regulations there involved did not, as it would here, categorically require the appropriation of State moneys. In *Williams* v. *Dandridge*, the Court, although invalidating Maryland's maximum limit on aid to families, halted at the brink of ordering appropriation of state funds (297 F. Supp. 450, 459):

> "Lest our holdings be misunderstood, some additional words are required. We do not hold that Maryland must appropriate additional funds to support its participation in the program of AFDC; we reiterate our previous holding that the Eleventh Amendment deprives courts of the United States from jurisdiction to grant such relief.
>
> "We hold only that if Maryland has appropriated insufficient funds to meet the total need under AFDC, as measured by the standards for determining need that Maryland has prescribed, Maryland may not, consistent with the Social Security Act or the equal protection clause, correct the imbalance by application of the maximum grant regulation. No other proposed solution to this problem is before us, and we express no other opinion."

See, to the same effect, *Westberry* v. *Fisher*, *supra*, 297 F. Supp. 1109, 1116:

"Maine is free to take reasonable steps, as others have done, to allocate on a non-discriminatory basis its resources available for AFDC."

It is anomalous that petitioners request that this Court capsize the Eleventh Amendment and order the appropriation of State funds in an assault against the State which has consistently maintained the highest levels of payment to AFDC recipients, while receiving the lowest proportion of federal contributions. Yet petitioners insist § 602(a)(23) in some unexplained way requires New York to nail to its masthead forever the precise scheme of AFDC payments which happened to be in effect in 1968. See *Securities & Exchange Commission* v. *Chenery Corp.*, 332 U. S. 194, 200-201 (1947). Indeed, an interpretation of § 602(a)(23) such as petitioners seek, which would invalidate the nation's highest level of payment while allowing other states to pay small fractions of New York's amount, might well itself raise a serious issue of denial of equal protection. Such criticism, based on the wide gulf in payments as between various states, has already been mounted. See testimony of Secretary of HEW John W. Gardner, House Committee on Ways and Means, March 1, 1967, in support of H. R. 5710 (administration bill), pp. 3-4, and before Senate Finance Committee on H. R. 12080, August 26, 1967, pp. 7-8. See also table appended to this brief.

What petitioners attribute to § 602(a)(23)—an effect far beyond the import of its wording or any Congressional intent—is an expression (completely unvoiced in the actual statute) of intent to sharply alter the balance between the federal government and the states. Such an "intention to disturb the balance is not lightly to be imputed to Congress." *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 513 (1940).

Although petitioners have maintained a drumfire of criticism of the State legislature (Br. pp. 14, 72), its motives

are, as this Court has repeatedly held, not a proper subject for judicial scrutiny. *Ferguson* v. *Skrupa, supra.* The Legislature had every right to consider the spiraling of costs of welfare and the grip of the vicious cycle of poverty on its recipients—matters of concern to all enlightened citizens and expressly made the subject of Presidential concern in the recent proposals of the President in the field of welfare, which take arms for the first time against the enormous disparities in levels of payment among the states.

New York is the highest taxed State in the nation and New York City is the highest taxed locality. Welfare is the largest item in New York's budget and AFDC is the largest item in the welfare budget. More people receive AFDC in New York State than in any other state. New York's payment per AFDC recipient is the highest in the country. Indeed, the State's payment for AFDC per capita population is an astounding $39.15, and New York City's an astronomical $66.12. It would have been negligent for the Legislature not to attempt to streamline this program, to cut its bureacratic costs and to insure that all recipients are treated equally to the extent possible.

The Legislature was allocating finite resources. It authorized $50,000,000 for day care centers (S. Bill No. 4568-A, 1969 Session) and provided for tuition payments for foster children, thus attempting to break the cycle of poverty rather than perpetuate it. In addition, the elimination of special grants and age differentials and the $7,500,000 appropriated by New York for administering the food-stamp program are forward-looking programs and should be fostered, not inhibited. *Day-Brite Lighting, Inc.* v. *Missouri,* 342 U. S. 421, 423 (1952).

Congress has deliberately refrained from establishing mandatory levels of AFDC payments for the states. It has, as this Court stated in *King* v. *Smith,* in language written after the enactment of § 602(a)(23), left each State

"free to set its own standards of need" and "to determine the level of benefits by the amount of funds it devotes to the program" (*id.* at 318-319). Despite this Congressional abstention and the burdens it has placed on New York's State government, municipalities and taxpayers, New York stands in the forefront of all states in its levels of welfare payment and in the total amounts spent by it on welfare. Petitioners' claim that New York has acted in contravention of a subsection which was enacted without cost appropriation by a cost-conscious Congress, and completely devoid of the far-reaching powers with which they seek to clothe it—and that such contravention invalidated New York's entire social welfare program—is without substance.

CONCLUSION

The order appealed from should be affirmed.

Dated: New York, New York, November 7, 1969.

Respectfully submitted,

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APPENDIX

Table of AFDC Programs

Description of individual AFDC programs listed in descending order of average monthly payment per recipient.

There follows a list of the 54 public assistance programs throughout this country and the United States average listed in the descending order of the average monthly payment of the recipient. The 54 districts include all 50 states plus the District of Columbia, Guam, Puerto Rico and the Virgin Islands. Under each district is listed the following information (derived from the indicated sources, most of which are vertical charts which appear in the main appendix):

I. Average monthly payment per recipient as of June, 1968 (117).*

II. Amounts expended per inhabitant for AFDC payments for the fiscal year ending June 30, 1968 (119).

III. Monthly cost standards for basic needs for a family of four recipients as of April, 1968 (106).

IV. Amount paid to a family of four recipients as of April, 1968 (106).

V. Percentage of public assistance paid from federal funds, fiscal year 1967 (125).

VI. Assistance provided (including whether or not there are maximums, and if so, of what kind, as well as exceptions** to such maximums). National Center for

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* Unless otherwise designated numbers in parentheses refer to pages of the Appendix herein.

** The Department of HEW does not list special needs provided by states which do not have maximum payments. They appear to be relevant only as exceptions by which maximums may more closely approximate the standard of need.

Social Statistics Report D-3 (October, 1968, HEW Social and Rehabilitation Service).

VII. Number of AFDC recipients ("Public Assistance Statistics", National Center for Social Statistics Report A-2 [June, 1969, HEW Social and Rehabilitation Service]).

VIII. Proportion of population receiving AFDC (children aided per thousand population under age 18 as of June, 1968) (118).

1. New York

I. $71.75 monthly per recipient.
II. $32.45 for AFDC per inhabitant.
III. $278 per month needed for a family of four.
IV. $278 paid to a family of four per month.
V. 39.9% Federal assistance.
VI. No maximum.
VII. 1,005,000 AFDC recipients.
VIII. 105 recipients per thousand children.

2. New Jersey

I. $58.25 monthly per recipient.
II. $13.70 for AFDC per inhabitant.
III. $332 per month needed for a family of four.
IV. $332 paid to a family of four per month.
V. 41.4% Federal assistance.
VI. No maximum.
VII. 221,000 AFDC recipients.
VIII. 51 recipients per thousand children.

3. Massachusetts

I. $55.85 monthly per recipient.
II. $16.85 for AFDC per inhabitant.
III. $288 per month needed for a family of four.
IV. $288 paid to a family of four per month.
V. 48.0% Federal assistance.
VI. No maximum.
VII. 181,000 AFDC recipients.
VIII. 60 recipients per thousand children.

4. Minnesota

I. $54.00 monthly per recipient.
II. $10.40 for AFDC per inhabitant.
III. $266 per month needed for a family of four.
IV. $266 paid to a family of four per month.
V. 54.7% Federal assistance.
VI. No maximum.
VII. 66,100 AFDC recipients.
VIII. 33 recipients per thousand children.

5. Connecticut

I. $52.00 monthly per recipient.
II. $14.40 for AFDC per inhabitant.
III. $307 per month needed for a family of four.
IV. $307 paid to a family of four per month.
V. 45.3% Federal assistance.
VI. No maximum.
VII. 78,300 AFDC recipients.
VIII. 48 recipients per thousand children.

6. Wisconsin

I. $50.30 monthly per recipient.
II. $7.55 for AFDC per inhabitant.
III. $239 per month needed for a family of four.
IV. $239 paid to a family of four per month.
V. 56.1% Federal assistance.
VI. No maximum.
VII. 82,600 AFDC recipients.
VIII. 34 recipients per thousand children.

7. Iowa

I. $49.25 monthly per recipient.
II. $10.05 for AFDC per inhabitant.
III. $256 per month needed for a family of four.
IV. $244 paid to a family of four per month.
V. 53.3% Federal assistance.

VI. No maximum.
VII. 115,000 AFDC recipients.
VIII. 40 recipients per thousand children.

8. North Dakota

I. $47.90 monthly per recipient.
II. $8.45 for AFDC per inhabitant.
III. $251 per month needed for a family of four.
IV. $251 paid to a family of four per month.
V. 65.2% Federal assistance.
VI. No maximum.
VII. 10,100 AFDC recipients.
VIII. 37 recipients per thousand children.

9. Rhode Island

I. $47.80 monthly per recipient.
II. $16.55 for AFDC per inhabitant.
III. $266 per month needed for a family of four.
IV. $266 paid to a family of four per month.
V. 52.8% Federal assistance.
VI. No maximum.
VII. 35,300 AFDC recipients.
VIII. 76 recipients per thousand children.

10. Washington

I. $47.65 monthly per recipient.
II. $11.55 for AFDC per inhabitant.
III. $268 per month needed for a family of four.
IV. $268 paid to a family of four per month.
V. 50.9% Federal assistance.
VI. Family maximum of $325, except to prevent undue hardship.
VII. 79,700 AFDC recipients.
VIII. 42 recipients per thousand children.

11. Vermont

I. $46.75 monthly per recipient.
II. $10.45 for AFDC per inhabitant.
III. $249 per month needed for a family of four.
IV. $249 paid to a family of four per month.
V. 69.7% Federal assistance.
VI. No Maximum.
VII. 11,500 AFDC recipients.
VIII. 44 recipients per thousand children.

12. Idaho

I. $46.75 monthly per recipient.
II. $9.40 for AFDC per inhabitant.
III. $238 per month needed for a family of four.
IV. $238 paid to a family of four per month.
V. 70.7% Federal assistance.
VI. No maximum.
VII. 13,000 AFDC recipients.
VIII. 33 recipients per thousand children.

13. California

I. $45.55 monthly per recipient.
II. $22.00 for AFDC per inhabitant.
III. $244 per month for a family of four.
IV. $183 paid to a family of four per month.
V. 48.6% Federal assistance.
VI. With 2 adults and 1 child a maximum of $166; for 2 children $191 and varying increases up to $437 for 14 children and $6 for each additional child. With 1 or no adults the maximum range is from $148 for 1 child to $221 for 3 children with varying increases to $412 for 13 children and $6 for each additional child. This maximum may be exceeded for special needs paid from local funds.
VII. 1,004,000 AFDC recipients.
VIII. 88 recipients per thousand children.

14. Michigan

I. $45.15 monthly per recipient.
II. $11.00 for AFDC per inhabitant.
III. $246 per month needed for a family of four.
IV. $246 paid to a family of four per month.
V. 48.9% Federal assistance.
VI. No maximum.
VII. 217,000 AFDC recipients.
VIII. 45 recipients per thousand children.

15. South Dakota

I. $44.45 monthly per recipient.
II. $10.30 for AFDC per inhabitant.
III. $254 per month needed for a family of four.
IV. $229 paid to a family of four per month.
V. 62.5% Federal assistance.
VI. Payment plus income may not represent more than 95% of standard of assistance.
VII. 15,000 AFDC recipients.
VIII. 42 recipients per thousand children.

16. Hawaii

I. $44.40 monthly per recipient.
II. $13.30 for AFDC per inhabitant.
III. $225 per month needed for a family of four.
IV. $225 paid to a family of four per month.
V. 47.8% Federal assistance.
VI. No maximum.
VII. 21,400 AFDC recipients.
VIII. 48 recipients per thousand children.

17. Kansas

I. $44.00 monthly per recipient.
II. $9.05 for AFDC per inhabitant.
III. $237 per month needed for a family of four.
IV. $237 paid to a family of four per month.

18. Illinois

I. $43.95 monthly per recipient.
II. $13.10 for AFDC per inhabitant.
III. $279 per month needed for a family of four.
IV. $279 paid to a family of four per month.
V. 49.1% Federal assistance.
VI. No maximum.
VII. 337,000 AFDC recipients.
VIII. 60 recipients per thousand children.

19. New Hampshire

I. $43.35 monthly per recipient.
II. $4.05 for AFDC per inhabitant.
III. $254 per month needed for a family of four.
IV. $254 paid to a family of four per month.
V. 43.7% Federal assistance.
VI. No maximum.
VII. 7,760 AFDC recipients.
VIII. 19 recipients per thousand children.

20. United States Average

I. $41.85 monthly per recipient.
II. $12.40 for AFDC per inhabitant.
III. No average computed but $278 was the nonfarm poverty level in 1966.
IV. No average computed.
V. 54.6% Federal assistance.
VI. As of October 1968, out of the 54 districts, 31 paid less than the full standard of assistance. Of these, 19 districts had family maximums, 7 had maximums per recipient but no family maximums, 4 had maximums depending on the number of persons in an assistance unit, 4 had limits on the percentage of the standard of need represented by the grant plus income and 7 had limits on the percentage of budget deficit represented by the grants.

VII. 6,558,000 total AFDC recipients, in United States.
VIII. 58 recipients per thousand children.

21. Oregon

I. $40.25 monthly per recipient.
II. $9.75 for AFDC per inhabitant.
III. $226 per month needed for a family of four.
IV. $226 paid to a family of four per month.
V. 51.5% Federal assistance.
VI. No maximum.
VII. 52,000 AFDC recipients.
VIII. 42 recipients per thousand children.

22. Colorado

I, $39.75 monthly per recipient.
II. $11.80 for AFDC per inhabitant.
III. $222 per month needed for a family of four.
IV. $185 paid to a family of four per month.
V. 53.0%Federal assistance.
VI. With two adults a maximum of $90 for 1 child plus $26 for each additional child up to 4 children. With 1 adult a maximum of $60 for 1 child plus $26 for each additional child up to 5 children, and without an adult $26 for each child up to 5 children and $21 for each further additional child in any event. Shelter and utilities are subject to separate maximums which vary among 3 geographical zones of the State. Furthermore, the payment plus income may not represent more than 75% of the standard of need.
VII. 57,200 AFDC recipients.
VIII. 56 recipients per thousand children.

23. Maryland

I. $39.00 monthly per recipient.
II. $13.25 per AFDC per inhabitant.

III. $178 per month needed for a family of four.
IV. $178 paid to a family of four per month.
V. 49.4% Federal assistance.
VI. Family maximum of $250 in Baltimore and $240 in the rest of the State. However, the maximum may be exceeded by emergency grants, demonstration projects in Baltimore and rent supplements from local funds in Montgomery County.
VII. 118,000 AFDC recipients.
VIII. 62 recipients per thousand children.

24. District of Columbia

I. $38.90 monthly per recipient.
II. $14.45 for AFDC per inhabitant.
III. $184 per month needed for a family of four.
IV. $184 paid to a family of four per month.
V. 100% (all money for Capitol from Federal Treasury).
VI. No maximum.
VII. 33,000 AFDC recipients.
VIII. 75 recipients per thousand children.

25. Pennsylvania

I. $38.55 monthly per recipient.
II. $11.45 for AFDC per inhabitant.
III. $213 per month needed for a family of four.
IV. $213 paid to a family of four per month.
V. 51.8% Federal assistance.
VI. No maximum.
VII. 376,000 AFDC recipients.
VIII. 58 recipients per thousand children.

26. Utah

I. $38.25 monthly per recipient.
II. $11.45 for AFDC per inhabitant.

III. $185 per month needed for a family of four.
IV. $185 paid to a family of four per month.
V. 66.2% Federal assistance.
VI. Maximum depending on number of persons in the assistance unit from 1 to 14 as follows: $86, $138, $163, $185, $205, $226, $246, $260, $274, $288, $302, $316, $330, $344. These maximums may be exceeded for special needs.
VII. 29,700 AFDC recipients.
VIII. 45 recipients per thousand children.

27. Alaska

I. $38.10 monthly per recipient.
II. $7.85 for AFDC per inhabitant.
III. $419 per month needed for a family of four.
IV. $185 paid to a family of four per month.
V. 47.7% Federal assistance.
VI. Maximum of $105 for first child if there is an adult recipient. If not, a maximum of $50 plus $40 for each additional child. This amount may be exceeded for costs of an approved training course.
VII. 7,000 AFDC recipients.
VIII. 38 recipients per thousand children.

28. Wyoming

I. $38.05 monthly per recipient.
II. $6.40 for AFDC per inhabitant.
III. $278 per month needed for a family of four.
IV. $200 paid to a family of four per month.
V. 51.2% Federal assistance.
VI. Maximum of $100 for 1 recipient; $170 for 2; $200 for 3 or 4; $215 for 5, 6 or 7; and a family maximum of $230.
VII. 1,500 AFDC recipients.
VIII. 30 recipients per thousand children.

29. Ohio

I. $37.50 monthly per recipient.
II. $8.70 for AFDC per inhabitant.
III. $193 per month needed for a family of four.
IV. $193 paid to a family of four per month.
V. 49.6% Federal assistance.
VI. No maximum.
VII. 248,000 AFDC recipients.
VIII. 45 recipients per thousand children.

30. Montana

I. $36.95 monthly per recipient.
II. $6.25 for AFDC per inhabitant.
III. $224 per month needed for a family of four.
IV. $224 paid to a family of four per month.
V. 46.7% Federal assistance.
VI. No maximum.
VII. 11,400 AFDC recipients.
VIII. 29 recipients per thousand children.

31. Nebraska

I. $35.85 monthly per recipient.
II. $7.20 for AFDC per inhabitant.
III. $330 per month needed for a family of four.
IV. $200 paid to a family of four per month.
V. 67.8% Federal assistance.
VI. Maximum of $110 for the first child, $140 for the second, $170 for the third plus $10 for each additional child.
VII. 26,500 AFDC recipients.
VIII. 37 recipients per thousand children.

32. Guam

I. $35.00 monthly per recipient.
II. $3.75 for AFDC per inhabitant.
III. $256 per month needed for a family of four.

IV. $256 paid to a family of four per month.
V. 50%. Moreover there is a limit on total amount of federal funds expended on public assistance, excluding medical assistance (NCSS Report D-3, p. 3 [10/68]).
VI. No maximum.
VII. 1,500 AFDC recipients.
VIII. 23 recipients per thousand children.

33. Oklahoma

I. $34.40 monthly per recipient.
II. $14.90 for AFDC per inhabitant.
III. $175 per month needed for a family of four.
IV. $175 paid to a family of four per month.
V. 70.0% Federal assistance.
VI. Maximum depending on the number of persons in an assistance unit from 1 to 9 as follows: $35, $120, $150, $175, $200, $220, $239, $255, $277, with a family maximum of $277.
VII. 88,800 AFDC recipients.
VIII. 79 recipients per thousand children.

34. Indiana

I. $32.65 monthly per recipient.
II. $3.90 for AFDC per inhabitant.
III. $287 per month needed for a family of four.
IV. $150 paid to a family of four per month.
V. 59.0% Federal assistance.
VI. Maximum of $100 for 1 adult and 1 child and $50 for a child alone plus $25 for each additional child. If the adult is incapacitated, the maximum is increased by $25. The maximum may be exceeded for costs of medical care.
VII. 60,100 AFDC recipients.
VIII. 22 recipients per thousand children.

35. Delaware

I. $32.25 monthly per recipient.
II. $12.10 for AFDC per inhabitant.
III. $236 per month needed for a family of four.
IV. $187 paid to a family of four per month.
V. 59.7% Federal assistance.
VI. Maximum of $50 per adult, $75 for the first child, $12 for each additional child up to 4, $10 for each additional child up to 7 and $9 for each additional child to a family maximum of $250 if there is an adult and $150 where there is no adult.
VII. 18,100 AFDC recipients.
VIII. 65 recipients per thousand children.

36. Virginia

I. $30.90 monthly per recipient.
II. $4.55 for AFDC per inhabitant.
III. $195 per month needed for a family of four.
IV. $191 paid to a family of four per month.
V. 70.2% Federal assistance.
VI. Family maximum of $225 which may be exceeded for costs of medical care and guardianship and for costs of special needs from local funds. Furthermore, the assistance payment and any other income may not exceed 90% of the standard of assistance, but that reduction is only applicable to requirements for food, clothing, personal care, household supplies, school supplies, and insurance.
VII. 71,100 AFDC recipients.
VIII. 28 recipients per thousand chilldren.

37. Nevada

I. $30.90 monthly per recipient.
II. $6.20 for AFDC per inhabitant.
III. $300 per month needed for a family of four.
IV. $158 paid to a family of four per month.

V. 56.3% Federal assistance.
VI. Maximum of $31 per individual recipient. This maximum may be exceeded up to 20% of unmet need.
VII. 9,400 AFDC recipients.
VIII. 38 recipients per thousand children.

38. New Mexico

I. $30.85 monthly per recipient.
II. $14.05 for AFDC per inhabitant.
III. $193 per month needed for a family of four.
IV. $183 paid to a family of four per month.
V. 73.1% Federal assistance.
VI. Family maximum of $190. Furthermore, the assistance payment may not represent more than 95% of unmet need.
VII. 44,800 AFDC recipients.
VIII. 72 recipients per thousand children.

39. Maine

I. $29.70 monthly per recipient.
II. $7.90 for AFDC per inhabitant.
III. $251 per month needed for a family of four.
IV. $137 paid to a family of four per month.
V. 67.3% Federal assistance.
VI. Maximum of $40 per adult (the second adult must be a parent), $40 for the first child, $30 for the second and $27 for each additional child to a family maximum of $250. If there are 2 adults in the family, a maximum of $30 for the first child and $27 for each additional child to a family maximum of $250. Furthermore, the assistance payment plus income may not exceed $300 per family.
VII. 29,300 AFDC recipients.
VIII. 47 recipients per thousand children.

40. Arizona

I. $28.85 monthly per recipient.
II. $8.90 for AFDC per inhabitant.
III. $202 per month needed for a family of four.
IV. $134 paid to a family of four per month.
V. 73.5% Federal assistance.
VI. Maximum of $80 for the first child and $27 for each additional child up to a maximum of $220 for a family of 3 or more and $155 for a family of 2.
VII. 45,400 AFDC recipients.
VIII. 31 recipients per thousand children.

41. Virgin Islands

I. $28.75 monthly per recipient.
II. $8.80 for AFDC per inhabitant.
III. $136 per month needed for a family of four.
IV. $136 paid to a family of four per month.
V. 50% Federal assistance. Furthermore, there is a limitation on the amount of total federal assistance exclusive of medical assistance. (NCSS Report D-3, p. 3 [10/68]).
VI. No maximum.
VII. 1,700 AFDC recipients.
VIII. 49 recipients per thousand children.

42. Kentucky

I. $28.50 monthly per recipient.
II. $11.10 for AFDC per inhabitant.
III. $216 per month needed for a family of four.
IV. $187 paid to a family of four per month.
V. 77.5% Federal assistance.
VI. In "industrial counties" for a family of less than 7 a maximum of $220 and for more than 7, $260. In all other counties for a family of less than 7 a maximum of $180 and for more than 7, $220. Furthermore, this assistance payment may not represent more than 86.5% of the budget deficit.

VII. 123,000 AFDC recipients.
VIII. 69 recipients per thousand children.

43. Tennessee

I. $26.45 monthly per recipient.
II. $7.65 for AFDC per inhabitant.
III. $206 per month needed for a family of four.
IV. $114 paid to a family of four per month.
V. 74.1% Federal assistance.
VI. A maximum of $45 for an adult, $45 for the first child and $15 for each additional child up to a family maximum of $150 with an adult and $135 without an adult.
VII. 71,400 AFDC recipients.
VIII. 56 recipients per thousand children.

44. North Carolina

I. $25.85 monthly per recipient.
II. $6.30 for AFDC per inhabitant.
III. $144 per month needed for a family of four.
IV. $144 paid to a family of four per month.
V. 73.1% Federal assistance.
VI. No maximum.
VII. 115,000 AFDC recipients.
VIII. 44 recipients per thousand children.

45. West Virginia

I. $25.60 monthly per recipient.
II. $15.95 for AFDC per inhabitant.
III. $248 per month needed for a family of four.
IV. $161 paid to a family of four per month.
V. 76.1% Federal assistance.
VI. A family maximum of $165 except payments may exceed that maximum for transportation, clothing for work, laundry and special diet. Furthermore, the assistance payment plus other income may not

represent more than 65.0% of the standard of need (except that this limitation does not apply to child care, transportation, clothing for work, laundry and special diet).
VII. 83,200 AFDC recipients.
VIII. 102 recipients per thousand children.

46. Georgia

I. $24.90 monthly per recipient.
II. $6.90 for AFDC per inhabitant.
III. $198 per month needed for a family of four.
IV. $125 paid to a family of four per month.
V. 78.4% Federal assistance.
VI. A maximum of $29 per adult, $38 for the first child and $29 for each additional child up to a family maximum of $154.
VII. 161,000 AFDC recipients.
VIII. 52 recipients per thousand children.

47. Missouri

I. $24.65 monthly per recipient.
II. $7.30 for AFDC per inhabitant.
III. $305 per month needed for a family of four.
IV. $124 paid to a family of four per month.
V. 65.4% Federal assistance.
VI. A maximum of $33 per adult, $43 for the first child and $24 for each additional child.
VII. 124,000 AFDC recipients.
VIII. 37 recipients per thousand children.

48. Louisiana

I. $23.65 monthly per recipient.
II. $9.75 for AFDC per inhabitant.
III. $204 per month needed for a family of four.
IV. $116 paid to a family of four per month.
V. 74.7% Federal assistance.

VI. $80 for the first child (whether or not there is an adult), $19 for the second child, $17 each for the third and fourth child, $12 for the fifth child and $18 for each additional child up to a family maximum of $163. A second adult is counted as a child. These maximums may be exceeded for medical and dietetic special needs up to a maximum of $168. Furthermore, there is a special medical allowance for an ill or handicapped child up to $263.
VII. 178,000 AFDC recipients.
VIII. 74 recipients per thousand children.

49. Texas

I. $20.45 monthly per recipient.
II. $2.85 for AFDC per inhabitant.
III. $206 per month needed for a family of four.
IV. $114 paid to a family of four per month.
V. 74.1% Federal assistance.
VI. A maximum of $60 for an adult and one child or $34 for a child alone and $21 for each additional child up to a family maximum of $123 with an adult or $118 without an adult.
VII. 166,000 AFDC recipients.
VIII. 26 recipients per thousand children.

50. Arkansas

I. $19.25 monthly per recipient.
II. $4.45 for AFDC per inhabitant.
III. $162 per month needed for a family of four.
IV. $90 paid to a family of four per month.
V. 77.0% Federal assistance.
VI. A maximum of $5 for each adult, $60 for the first child and $10 for each additional child up to a family maximum of $130 if there are adults in the family and $120 without an adult.
VII. 40,700 AFDC recipients.
VIII. 41 recipients per thousand children.

51. South Carolina

I. $18.45 monthly per recipient.
II. $2.25 for AFDC per inhabitant.
III. $172 per month needed for a family of four.
IV. $93 paid to a family of four per month.
V. 78.1% Federal assistance.
VI. A maximum of $15 for each adult, $30 for the first child and $21 for each additional child up to a family maximum of $125.
VII. 42,200 AFDC recipients.
VIII. 24 recipients per thousand children.

52. Puerto Rico

I. $16.10 monthly per recipient.
II. $4.80 for AFDC per inhabitant.
III. $70 per month needed for a family of four.
IV. $28 paid to a family of four per month.
V. 50% Federal assistance. Moreover, there is a limitation on the total amount of Federal funds that can be paid annually for public assistance, excluding medical assistance. (NCSS Report D-3, p. 3 [10/1968]).
VI. The assistance payment may not represent more than 33.0% of the budget deficit.
VII. 197,000 AFDC recipients.
VIII. 104 recipients per thousand children.

53. Florida

I. $15.15 monthly per recipient.
II. $4.35 for AFDC per inhabitant.
III. $189 per month needed for a family of four.
IV. $85 paid to a family of four per month.
V. 76.6% Federal assistance.
VI. The assistance payment may not represent more than 65.0% of the budget deficit.
VII. 178,000 AFDC recipients.
VIII. 37 recipients per thousand children.

54. Alabama

I. $15.15 monthly per recipient.
II. $3.95 for AFDC per inhabitant.
III. $177 per month needed for a family of four.
IV. $89 paid to a family of four per month.
V. 77.6% Federal assistance.
VI. Maximum of $40 for the first child and $25 for each additional child up to a family maximum of $140. Furthermore, the assistance payment may not represent more than 50% of the budget deficit except that this percentage limitation does not apply in cases of exceptional need.
VII. 105,000 AFDC recipients.
VIII. 33 recipients per thousand children.

55. Mississippi

I. $8.50 monthly per recipient.
II. $4.35 for AFDC per inhabitant.
III. $201.00 per month needed for a family of four.
IV. $55.00 paid to a family of four per month.
V. 81.3% Federal assistance.
VI. A maximum of $25 for the first child, $15 for the second child and $10 for each additional child up to a family maximum of $90. Moreover, the assistance payment may not represent more than 27.0% of the budget deficit except this percentage limitation does not apply for care at boarding schools and special educational institutions.
VII. 106,000 AFDC recipients.
VIII. 92 recipients per thousand children.